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HUMAN RIGHTS VIOLATIONS IN KASHMIR

Piotr Balcerowicz and Agnieszka Kuszewska

Human Rights Violations in Kashmir

The book is a comprehensive study on human rights in Kashmir in relation to the dynamics of Indo-Pakistani policies, providing a structured and interdisciplinary approach to the subject.

Whilst surveying some of the most appalling case studies of human rights abuses, the book offers a methodical analysis of the structural and structured human rights violations in the divided Kashmir and places them in a much broader context of South Asian politics. The book examines root causes responsible for a human rights violations-prone environment and climate of impunity in which the actors perpetrate their crimes unpunished, unwrapping legal and extralegal nexus behind the crimes.

Human Rights Violations in Kashmir will appeal to students and scholars of peace and conflict studies, international relations, human rights studies, and South Asian studies.

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Human Rights Violations in Kashmir

Piotr Balcerowicz and Agnieszka Kuszewska

Routledge
Taylor & Francis Group
LONDON AND NEW YORK

First published 2022
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

and by Routledge
605 Third Avenue, New York, NY 10158

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data
A catalog record has been requested for this book

ISBN: 978-1-032-04849-9 (hbk)
ISBN: 978-1-032-05201-4 (pbk)
ISBN: 978-1-003-19652-5 (ebk)

DOI: 10.4324/9781003196525

Typeset in Times New Roman
by KnowledgeWorks Global Ltd.

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Abbreviations

AFSPA	Armed Forces Special Powers Act
AI	Amnesty International
APDP	Association of Parents of Disappeared Persons
BJP	Bharatiya Janata Party ((Bhāratīya Janatā Pārṭī)
BNF-H	Balawaristan National Front (Abdul Hameed Khan Group)
CFL	Cease-Fire Line
CRPF	Central Reserve Police Force
CPEC	China-Pakistan Economic Corridor
FATA	Federally Administered Tribal Areas
FIR	First Information Report, prepared by the police on the basis of a complaint lodged with the police by the victim (or the victims' representative) of a criminal offence
GB	Gilgit-Baltistan (after 2009), before: NA; also the agencies of Gilgit and Baltistan
HR	human rights
HRW	Human Rights Watch
HuM	Hizb ul-Mujahideen (Ḥizb al-Mujāhidīn)
IaJK	Indian-administered Jammu and Kashmir
IPTK	International People's Tribunal on Human Rights and Justice in Kashmir
J&K	Jammu and Kashmir
JeM	Jaish-e-Mohammed (Jaish-e-Muḥammad)
JKCCS	Jammu Kashmir Coalition of Civil Society
JKLF	Jammu Kashmir Liberation Front
JKPNA	Jammu and Kashmir People's National Alliance
JKPSA	Jammu and Kashmir Public Safety Act
LeT	Lashkar-e-Taiba (Lashkar-e-Ṭayybā)
LoC	Line of Control
MoKGB	Ministry of Kashmir Affairs and Gilgit Baltistan (till 2009 MKANA)
NA	Northern Areas (between 1972 and 2009), after 2009: GB
NOC	No Objection Certificate

PAGD	People's Alliance for Gupkar Declaration
PaJK	Pakistani-administered Jammu and Kashmir
PEMRA	Pakistan Electronic Media Regulatory Authority
PTI	Pakistan Tehreek-e-Insaf (Pākistān Tahrīk-e-Insāf)
PSJ&K	the (former) Princely State of Jammu and Kashmir
SOG	Special Operations Group
UAPA	Unlawful Activities (Prevention) Act
UNCIP	United Nations Commission for India and Pakistan
UNSC	United Nations Security Council
UTJ&K	union territory of Jammu and Kashmir
UTL	union territory of Ladakh

Acknowledgements

The authors would like to extend their deepest heartfelt words of thanks to all our colleagues and friends in Kashmir, India and Pakistan who have offered us their warmest hospitality and friendship, provided us with uncountable occasions for discussion and invaluable first-hand information, but who, unfortunately, have to remain anonymous out of fear of likely reprisals, persecution and intimidation they or their beloved ones may encounter at the hands of Indian or Pakistani apparatus of state violence. Robin Cowley deserves particular thanks for going through the manuscript and proof-reading the text. Our special thanks are also due to Dorothea Schaefter and Alexandra de Brauw for welcoming the original book proposal and for their infinite patience with regular postponements of the final submission of the manuscript.

Work on this project has been generously supported by the National Science Centre of Poland (NCN), under Research Project: "Human rights and India's and Pakistan's policy towards Kashmir" (2012/05/B/HS5/00726), for which the authors would also wish to express their gratitude.

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1 Introduction

The unresolved India-Pakistan conflict remains one of the major challenges in contemporary international relations. It remains an accusation against both India and Pakistan, the human rights violations record of which has seriously put to question their status as entities aspiring to be perceived as genuinely democratic states and exposes them rather as brute forces occupying the region of Kashmir[1] which they were once expected to judiciously administer until the future of the lands is determined. These are, as it transpires from this monograph, the forces interested in perpetuating the conflict out of their self-interest at any cost and viewing the population of Kashmir as a superfluous addendum to the territory being the only treasured asset. The abolition of Jammu and Kashmir's autonomy by India in 2019, which is expected to trigger similar steps by Pakistan (aided by China, which captured chunks of the former Princely State of Jammu and Kashmir and has no interest in the resolution of the conflict), in many ways resembles the annexation of the West Bank by Israel, announced by Benjamin Netanyahu, or the complete dismantling of Hong Kong autonomy. And yet, what happens in Kashmir has not attracted the world's public opinion to a proportionate degree.

The aim of the book is to provide a balanced, impartial and thorough analysis of human rights problems in both parts of the disputed territory of the former Princely State of Jammu and Kashmir, currently administered by India and Pakistan. The two South Asian states use, either explicitly or indirectly, the Kashmir issue as an important determinant of their internal and foreign policies and the conflict is embedded in the power structures of both states, which are nourished through it. At the same time, being signatory states of a few international human rights instruments, they both acknowledge the general framework of international human rights regime and their duties imposed thereby. Nevertheless, in flagrant contradiction of these obligations, they both commit a wide range of abuses within the sphere of human rights and do not seem to be interested in introducing any legal or political measures that would eliminate them. The scale of human rights violations, in particular in the case of India, renders its image of the world's largest democracy as an ensanguined forgery. Any state that *systematically* and *systemically* violates basic civil and human rights of its citizens or the population that inhabits the territories it

DOI: 10.4324/9781003196525-1

administers and allows for constitutional framework that allows for these violations cannot be considered a democracy in the true sense.

The two parts within the monograph are complementary in approaching the same problem from Pakistan's and India's perspectives. They are devoted to the analysis of violations of human rights in Pakistani-administered and Indian-administered Kashmir, their nature and causes. These do not *per se* provide a still another report on human rights violations in the traditional sense or enumerate all individual cases of abuses. Rather, by referring to selected case studies, they present typologies and general categories of human rights violations and describe the underpinnings and structure of violations, which persistently consists of four packs[2] of enforced disappearances, illegal detentions, torture and extra-judicial killings. Additionally, these include fake encounters and the policy of intimidation as well as a consistent denial of a range of human rights, such as political rights, right to freedom of expression and related rights, right to freedom of religion and belief, right to a dignified life and related rights, as well as a range of cultural rights. The chapters also examine root causes responsible for a human rights violations-prone environment and the climate of impunity in which the actors perpetrate their crimes unpunished and unwrap legal and extra-legal nexus behind the crimes.

The analysis unequivocally demonstrates that whereas both Pakistan and India treat Kashmir as a territorial asset of strategic and military importance, wherein the population is a completely dispensable, if not entirely removable appendage to the land, and truly act as colonial and occupying powers, the scale of violence and extent of violations in Indian-administered part are quantitatively incomparably higher and qualitatively much more complex and sophisticated than those observed in Pakistan. It is therefore indispensable to throw a spotlight on the scale and prevalence of these violations—this is the purpose of Part 1 ('Violations of human rights in Indian-administered Kashmir'). Massive state-imposed militarisation and violence witnessed in the Kashmir Valley show that Indian authorities have exceeded their rights in the region either as legitimate central government, temporary administrator or occupying force bound by the international laws. The anti-India revolt in the Kashmir Valley has different aspects and dimensions. It is on one hand indigenous result of long-term India's policy in Jammu and Kashmir, which brought the sense of political and economic marginalisation among the Kashmiris, on the other, it is buttressed by the Pakistani military establishment in its persistent, communalised and ideologically motivated territorial revisionism, disguised as care for 'the plight of Kashmiri Muslims'. The grave violations of human rights perpetrated mostly by Indian security forces, the army and agencies which are deployed in the region on an enormously excessive scale, escalated in the late 1980s with the anti-India insurgency in the Kashmir Valley, which resulted in the domination of Valley-centred narrative in the general discourse on human rights challenges in Kashmir.

The monograph is divided into two parts, with each part being divided into several chapters. The first part investigates the human rights violations in

Indian-administered Kashmir, the second—in Pakistani-administered part. The chapters included in Part 1 discuss representative case studies of abuses perpetrated in Indian-administered Kashmir by the state and non-state actors in the three decades of the insurgency that abound in incidents exemplifying core tenets of the aggressive strategy and ferocious approach of Indian authorities to Kashmir and Kashmiris. Importantly, they also investigate human rights situation in the aftermath of revoking the autonomy of the erstwhile state of Jammu and Kashmir in 2019 by discussing the reception to the Indian government's decision in all parts of Indian-administered Kashmir, the Valley, Ladakh and Jammu. The chapters refer to multiple reports published by international and local human rights organisations (such reports are practically non-existent on Pakistani side), provide structural analysis and exemplification of human rights abuses, and are supplemented with documentation of selected, most gruesome cases, which are well known to the experts investigating Kashmir conflict, but not to the general international public opinion. The analysis comprises the problem of the *de facto* impunity, of systematic nature, when the state fails to persecute the perpetrators of violence for political reasons and acts as a shield for abusers, and the *de jure* impunity, of systemic nature, when special laws and regulations are intentionally enacted to guarantee immunity to state-supported actors. Contrary to the dominating narrative, not only Indian security forces are responsible for abuses against the people and their rights in Indian-administered Kashmir, but also with their policy of ethnic cleansing, terrorism and ideological dictate, some militants and hardline separatist leaders have their own inglorious share.

In the case of Pakistani-administered territories, i.e. AJK and GB, as outlined in Part 2 ('Violations of human rights in Pakistani-administered Kashmir'), one of the prime root causes of the violations chiefly perpetrated by the army, clandestine agencies and administration is the actual absence of self-governance and almost total deprivation of political rights of the residents of these regions, despite a formal existence of a façade of self-governing bodies, which remain under tight control of Islamabad and Rawalpindi. The climate of impunity is coupled with regional seclusion and separation of the whole region, with AJK and GB to different degrees, where the contacts with the outside world are extremely restricted, and this engenders an environment strongly favourable to human rights violations and impunity behind the curtain of invisibility. AJK and GB hardly ever feature in human rights reports in general, and practically, all human rights organisations active in Pakistan are silent on the situation in the region, being well aware of the risk that publishing critical reports on AJK in particular may lead to the closure of their activities by the state apparatus. The free hand of the state apparatus of violence is combined with virtual non-existence of a genuine civil society due to widespread fears among the residents of reprisals and persecutions from state-aligned actors, esp. the clandestine agencies and army. The violations of human rights and civil rights are not as flagrant as in Indian-administered Kashmir, nor do they involve tens of thousands of casualties

and active militancy and counter-insurgency operations, and therefore the region hardly ever hits the headlines. In addition, the nature of human rights abuses is in certain aspects quite different as compared to the Indian part. The patterns of these violations are to some extent related to the status of the territories which are held hostage in Pakistan's relations with India.

The monograph is based not only on a wide range of sources that comprise both published and unpublished materials, reports, primary and secondary literature and archival material but also on the authors' first-hand experience and research carried out in the region during several visits to all the territories of the former State of Jammu and Kashmir, and numerous research visits to South Asia. The authors have greatly benefited over the years from innumerable personal contacts, discussions and correspondence with Kashmiri, Indian and Pakistani intellectuals, academics, human rights activists, researchers, journalists both living in the region but also barred from visiting it. Face-to-face contacts with the people of Kashmir, those living in the region and the diaspora, have largely contributed to the authors' understanding of the conflict and the final shape of the book. It is an outcome of a broader research on Kashmir and human rights in the context of the policies of India and Pakistan vis-à-vis Jammu and Kashmir, which also resulted in two other complementary monographs by the authors (*Kashmir in India and Pakistan policies* and *Law and conflict resolution in Kashmir,* Routledge 2022).

The work is a result of joint labour and consists of chapters initially written separately by the co-authors, who are characterised by their distinctive analytical methodologies, insights and conclusions due to their different academic expertise and background, which is reflected in respective chapters. Following this same principle that ensures internal coherence of the whole project, each chapter has originally been written by one author, blue-pencilled by the co-author whose input, critique, feedback and comments are included in the final form. As a result, the work is characterised, as it is hoped, by a strong interdisciplinary and balanced approach, with expertise ranging from political science and international relations to political philosophy, cultural and religious studies, history and classical Indology, which enables the authors to view the conflict from a range of different perspectives and in a more perceptive manner.

Piotr Balcerowicz and Agnieszka Kuszewska
Munich/Warsaw and Kraków/Warsaw, April 2021

Notes

1. In this monograph, the term 'Kashmir' refers to the parts of the former Princely State of Jammu and Kashmir, presently administered by India (the Kashmir Valley, Jammu and Ladakh) and Pakistan (Azad Jammu and Kashmir [AJK] and Gilgit-Baltistan [GB]).
2. The commercial associations this expression may trigger are intended. The whole process does resemble a production line: once one gets into the machine triggers, i.e. 'gets disappeared', the chances of going through all the four stages and reaching the end of this dehumanising 'production line' are high.

Part I

Violations of human rights in Indian-administered Kashmir

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2 Human rights in Indian-administered Jammu and Kashmir

Introduction

Agnieszka Kuszewska

This chapter is devoted to human rights (HR) violations in Indian-administered Jammu and Kashmir (henceforth IaJK, which includes Kashmir Valley, Jammu and Ladakh, presently bifurcated into two union territories, UTs). It aims to provide an introduction to comprehensive understanding of the nature of these abuses and investigating their institutionalised, systematic and systemic patterns with multidimensional consequences. The study focuses primarily, but not solely, on the Kashmir Valley, due to three essential factors, which have a decisive impact on the intensity of the abuses.

First, being the major flashpoint of anti-India militancy since 1989, the Valley plays pivotal role in the debate on sociopolitical dynamics and HR abuses in Kashmir. For the last three decades, it has remained an epicentre of popular insurgency against the policies enacted by New Delhi, which include state-imposed dispossession and are accompanied by heavy militarisation, where the armed forces often act with impunity and disdain for democratic principles, to which India officially adheres. The abuses have been normalised and legitimised to an unprecedented scale, even compared with other restive regions of India. The rebellion against what is viewed by the protesters as state-controlled hegemony has been manifested by diverse demands of self-rule, autonomy or independence, and by the Islamic struggle to join Pakistan, buttressed by Pakistani-backed extremist groups and some hard-line pro-Pakistani separatists.

Second, Pakistan's two-nation theory-based territorial revisionism, with protracted fixation on controlling IaJK under the pretence of protecting Kashmiri Muslims against India, and 'finishing the business of partition',[1] remains a core objective of its India-centric, ideologically driven policy. For Pakistan which unceasingly adheres to the *Kaśmīr banegā Pākistān* ('Kashmir will be [a part] of Pakistan') goal, HR violations against Kashmiri Muslims in the Valley serve as a proof that India is an undemocratic state, persecuting and disenfranchising its minorities. Whenever any international policymaker or an NGO publicly raise concern over situation in the Valley, Pakistan treats it as its own strategic and moral victory, bolstering its rights to IaJK. This selective approach vis-à-vis HR is mainly aimed at pursuing Pakistani establishments' goals and does not result from

DOI: 10.4324/9781003196525-3

genuine care about Kashmiri civilians' well-being. Pakistan-sponsored *jihādists* have their own contribution to deteriorating HR situation in IaJK by mobilising people in the name of religious fundamentalism and luring subsequent generations of local Muslim youth into militancy. This vicious circle of radicalisation has twofold results: first, young militants renounce professional education, which adversely affects their chances for better future and development, second, some of them are infested with intolerance not only against other religions, but also against the Muslims who do not wish to follow violent sectarianism and theocratic agenda. Moreover, contrary to Pakistan's assertions, the native inhabitants of PaJK (Pakistani-administered Jammu and Kashmir)[2] also suffer from radicalisation dynamics within Pakistan, systemic and systematic sociopolitical and economic deprivation and their fundamental rights are curbed. Yet, by referring to the abuses in the Valley, Pakistan tries to divert attention from its wrongdoings.

Third, both India and Pakistan contour their national identity by shaping the conflict-related public discourses around certain, meticulously selected metaphoric expressions regarding Kashmir. According to this jargon, Kashmir is Pakistan's *shārhag* ('jugular vein'[3]) and India's *abhinna aṅg* ('inseperable limb', 'integral part'[4]). Any attempt to question the official narrative or any proposal which would include eagerness for compromising and dialogue, is considered incongruous acquiescence, cowardice or even an anti-state provocation. A quasi-colonial, supremacist policy vis-à-vis the former Princely State of Jammu and Kashmir (PSJ&K) is pushed forward, manifested by claiming the right to articulate the needs of its inhabitants and controlling them territorially, politically, economically and physically. In Indian and Pakistani official policies, controlling Kashmir occupies central position and multi- dimensionally impacts HR situation, particularily in the Kashmir Valley.

The origins and trajectories of the anti-India rebellion in the Valley, which erupted in 1989, and patterns of HR violations, need to be understood and contextualised within multiple factors, dating back to pre- and postcolonial India, with Kashmir's political subjugation and (after 1947) gradual incorporation into the Indian constitutional framework. As Part 1 of the book aims to investigate current situation (historical study from the inception of the PSJ&K in 1846, see Balcerowicz–Kuszewska, 2022a §2), it will mostly focus on the last three decades with comprehensive emphasis on violations committed after 2010. The year 2019, when the provisions stipulated in Article 370 of the Constitution of India were annulled and the erstwhile state of Jammu and Kashmir (J&K) was downgraded and bifurcated into two UTs, marked a crucial *caesura* in the history of Kashmir. The deprivation of the last pieces of its autonomy was a culmination of the state-led policy of subsequent Indian governments, with legislative and normative practices that shrink space for local representative democracy, drastically curb civil freedoms and curtail pluralist debate on Kashmir's future.

Before bifurcation, the IaJK consisted of three administrative divisions: Jammu, Kashmir (both included ten districts) and Ladakh, split into two

districts: Kargil and Leh.[5] Recognising that IaJK is internally diverse with its unique composite ethnic, linguistic, cultural, religious identities and interactions with India, the investigation in Part 1 of the book goes beyond the Valley. Local narratives and reception of India's policies largely differ in three chunks of the former J&K and so is the HR situation. Nonetheless, the assumption that August 2019 unilateral constitutional changes with revocation of laws, which safeguarded some privileges of all native IaJK's inhabitants, were a manifestation of supremacist approach vis-à-vis the region by the ruling coalition led by Bharatiya Janata Party (BJP, *Bhāratīya Janatā Pārṭī*, Indian People's Party), seems to be justified. At the core of its policy of religiously motivated nationalism are twin notions of Hindus' superiority: Hindutva[6] (Hinduness) and *hindū rāṣṭra* (Hindu nation), which are used as a political tool to mobilise the supporters, subjugate minorities and dissidents in order to impose and sustain their vision of the state. Under the new provisions, the Valley constitutes one part of the union territory of Jammu and Kashmir (UTJ&K), the other being Jammu. Ladakh was transformed into a separate union territory of Ladakh (UTL), which was largely welcomed in Buddhist Leh, but not in Muslim-dominated Kargil.[7]

The violations of Kashmiris' rights and freedoms, perpetrated by the state, the armed forces, that are deployed in the Valley, and also by the separatists/militants, escalated exponentially when the insurgency to 'liberate' Kashmir from India[8] massively erupted.[9] India's iron-fisted response was tantamount to excessive militarisation of the region, which leads to the victimisation of the entire civilian population and raises questions for the real purposes of such oppressive policies. The term 'armed forces'[10] refers here to various military and paramilitary personnel of local and nonlocal origin, functioning in Kashmir, for example the regular army, including the Rashtriya Rifles (*Rāṣṭrīya Rāiphals*, RR—a branch of the Indian army, specialising in counterinsurgency operations, under the authority of the Indian Ministry of Defence), and the intelligence agencies. Other nonlocal forces include Central Armed Police Forces (CAPFs), operating under central administrative authority of the Ministry of Home Affairs with major role of border guarding and counterterrorism. There are five CAPFs in India, the majority of them present in Kashmir: Central Reserve Police Force (CRPF—major Indian central police force for internal security; originally established as the Crown Representative Police in 1939, one of the oldest Central paramilitary forces), Sashastra Seema Bal (*Saśāstra Sīmā Bal*, SSB—border guarding force also engaged in counterinsurgency operations), Border Security Force (BSF—special forces for border security established in the aftermath of the 1965 War with Pakistan). The local police, weakened when the insurgency in the Valley started, was reinforced in mid-1990s to include locals in anti-militant operations. The Jammu and Kashmir Police (JKP, established in 1873) since 1994 includes Special Operations Group, SOG,[11] anti-militancy elite force selected from JKP to engage and strengthen local forces; it comes under control of India's Ministry of Home Affairs. Various armed

forces operating in Kashmir were most often estimated between 600,000 and 700,000[12]; they were further reinforced to approximately 900,000 once security measures were tightened on the eve of Kashmir's semi-autonomy annulment in 2019.[13]

The incidents of violence in the Valley result in the deprivation of basic rights and freedoms, such as right to life, right to be treated with humanity in detention, equality before the law and freedom from torture and discrimination. They include *inter alia* enforced disappearances, illegal detentions, torture and extra-judicial killings (the 'four-pack' of abuses, once someone gets disappeared, the chances of going through all the stages of dehumanising abuses are high). Kashmiri Muslims from the Valley view their resistance as the struggle against political and socio-economic marginalisation, occupation and impunity of the armed forces of a powerful state. Claiming their voices are unheard, some of them consider themselves a nation denied their rightful place in the world-system.[14]

Not only Indian security forces are responsible for the acts of violence but also the Pakistan-supported militants waging their *jihād* in the name of pan-Islamism and some local hard-line separatists have made their own contribution by trying to impose their radical narratives on Kashmiris. With the inception of insurgency in the Valley and rise of Islamic fundamentalism, the ethnic cleansing and mass exodus of Kashmiri Pandits,[15] who had for centuries constituted a politically and culturally influential minority in the Kashmir Valley, largely changed the demographic pattern of the region.[16] The prospects for peaceful coexistence and socio-economic development were therefore shattered not only by the policies of subsequent Indian governments and security apparatus but also by insurgency-inflicted terror, Pakistan-backed Islamic *jihād*, and India's counterinsurgency operations, which engaged ex-militants.[17] All these key players have conflicting objectives, but to materialise them, they paradoxically refer to comparable strategy by trying to eradicate the local, historically shaped patterns of multi-religious coexistence. The principles of governance, transparency, rule of law and democratic values, which should characterise India taking pride in being the largest democracy in the world, were further dilapidated following the loss of what remained from the autonomy of the erstwhile state of J&K. The potential demographic engineering with centre-supported influx of Indian Hindus to the newly established UTs may additionally affect the HR situation in Kashmir. This very specific, multi-layered dynamics inspires to recognise and analyse the interests of the major stakeholders in IaJK and the legal scaffolding which provides impunity to perpetrators of the violations. Contextualising the claims and wishes of IaJK's inhabitants within a broad spectrum, which exceeds the simplified narrative of portraying the issue merely in the prism of the Indo-Pakistani conflict and both states' interests, enables to broaden the understanding of Kashmiris' *āzādī* (freedom) discourses and to inquire into the discourses of Jammu and Ladakh. Conspicuously, the problem of HR violations in IaJK needs to be addressed within all these complexities and particularly within the current political climate in India,

which nurtures Hindutva-based nationalism and monocultural unity, thus normalising and legalising communal violence and persecution of minorities. It is against this convoluted background that various claims and expectations in Kashmir need to be understood.

In accordance with international standards, HR are regarded in this study as universal, inalienable, indivisible and inherent to all, regardless of nationality, sex, national or ethnic origin, colour, religion, language etc. The primary goal of HR is to protect people from the abuse of power by the state, its agents and non-state actors. Global HR are enshrined in multiple instruments. The Universal Declaration of Human Rights (UDHR) of 1948 contains a catalogue of HR; it is not an enforceable treaty, but it became an influential HR standard, a certain *jus commune*, used in subsequent HR treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. These instruments enumerate the universal civil, political, economic, social and cultural rights. Through ratification of the covenants and because of the universal application of customary HR law and norms, governments undertake to introduce legislation commensurate with their treaty obligations and duties. India is a member of the international HR system as it ratified some of the HR instruments. Thereupon, it accepted the duty and obligation to respect, protect and fulfil HR.

Part 1 of the book has the following purposes: (1) to study the complex nature of HR violations in IaJK (with particular reference to the Valley) within the political, legal and ideological features of contemporary India, (2) to provide a glimpse into selected case studies, the international and local documentation and response to these abuses, (3) to contribute to a greater understanding of the role and impact of the state and other actors in systemic and systematic violations and (4) to pursue and disseminate a critical, balanced study of the multidimensional nature of HR challenges in the context of current and future sociopolitical dynamics in IaJK.

Notes

1. More: Balcerowicz–Kuszewska (2022a).
2. PaJK includes Azad Jammu and Kashmir (AJK) and Gilgit Baltistan (GB).
3. Shoaib (2013: 43).
4. '*Jammū-Kaśmīr Bhārat kā abhinna aṅg hai*': Jammu and Kashmir is an inseparable limb of India.
5. According to the Census of India (2011), Jammu division had population of approximately 5.35 million people, Kashmir—6.9 million and Ladakh—290,000. The 16th Indian census, planned in 2021, was delayed due to the Covid-19 pandemic.
6. Vinayak Damodar Savarkar (a staunch opponent of Mahatma Gandhi) coined the term Hindutva, a political ideology formulated and developed since the early 1920s. It requires absolute ideological devotion, rejects diversity, supports Hindu supremacism, bolsters systemic persecution of religious minorities, human rights groups or pro-democratic activists and favours authoritarianism with 'strong' leadership. It should not be equated with Hinduism, which

includes a huge variety of beliefs and practices and is widely discussed in India and beyond by intellectuals, thinkers, analysts, HR activists, etc., *inter alia* due to its inequality-supporting caste system.

7. Wani (2020).
8. Snedden (2015: 249).
9. A.G. Noorani (2013, II: 570–571) confirms that the militancy and resistance had existed in IaJK before, at least since 1965, which can be exemplified by the activities of two leaders. First, Shabbir Ahmad Shah, politically involved since his early youth in the Jammu and Kashmir Youth League, established in 1963–1964, which was against the accession of J&K to India, a supporter of self-determination for Kashmir as founder and president of the Jammu and Kashmir Democratic Freedom Party and APHC activist. He spent over 30 years of his life in prison and is referred to as the 'Nelson Mandela of Kashmir' or 'Jail Bird of Kashmir' and recognised as a prisoner of conscience by Amnesty International. Second, Azam Inquilabi, a staunch separatist who was also arrested for the first time already in the mid-1960s, then cooperated with Maqbool Butt, and, in 1980, formed the pro-Pakistani Kashmir Muslim League, which he later merged with his pro-independence Mahaz-e-Azadi party. Having crossed the ceasfire line (later LoC) to PaJK since late 1960s, in 1990s he became an early leader of United Jihad Council, a Muzaffarabad-based umbrella organization of Kashmir-oriented militant groups. More: Balcerowicz–Kuszewska (2022a).
10. Contrary to the official narrative of the Indian state and media referring to them as 'security forces', they are often regarded by Kashmiris in the Valley as symbol of occupation, oppression and insecurity. Fazili (2018: 207).
11. The SOG, consisting mostly of troopers from various ethnic groups of the Valley and Jammu (including Gujjars and Dogras), on the one hand played pivotal role in counter-terrorism operations, on the other, was criticised for operating outside the law, using excessive force and for perpetrating HR violations, including killing civilians dubbed as terrorists to get promotions and money rewards. The Jammu and Kashmir Peoples Democratic Party (JK PDP) even pledged disbanding the SOG in 2002. More: Peer (2002), Fazili (2018: 194–195).
12. Manecksha (2017: 4), Ghosh (2014), Navlahka (2011: 163). The last author provided a precise number of the troops: 627,000.
13. APDP (2019b: 26). The ratio of armed personnel to civilians stood approximately 1:17 in the mid-2010s with the number of militants assessed as approximately 300. Following additional militarisation of the Valley in 2019, there may even be more armed personnel per civilian in the region. Detailed analysis, see Balcerowicz–Kuszewska (2022a, §18.4).
14. Manthena (2016).
15. Most of the internally displaced persons from the Valley belong to the Kashmiri Brahmin community. Kashmiri Muslims, Dogra Rajputs, Sikhs and non-Kashmiri Hindus constitute a minority within this group. Malhotra (2007: 72).
16. More on Pandits' exodus: Balcerowicz–Kuszewska (2022a).
17. Chowdhary (2010: 4) was highlighting this dynamics already a decade ago.

3 Selected root causes and the structure of human rights violations

Agnieszka Kuszewska

3.1 Majoritarian Hindu nationalism

Under the National Democratic Alliance coalition government, led by the BJP, re-elected in 2019, with Narendra Modi and his close and powerful aide Amit Shah (the Minister of Home Affairs), who became an architect of the Kashmir policy, India has institutionally and structurally reinforced the role of Hindu far-right majoritarianism in its domestic policy. As a result of the resurgence and augmentation of religiously motivated nationalism and communal agitation, the founding principles of secularism and equal status to all religions, advocated by India's first Prime Minister, Jawaharlal Nehru and other proponents of inclusiveness as civilisational ethos of India and a means to foster national unity, are largely disregarded. Kashmir, strategically and politically exploited by all post-independence Indian governments as a symbol of ethnoreligious diversity and coexistence, has now become a crucial element of a larger political and social campaign. It is aimed at redefining the project of a democratic, inclusive, secular state into a one-nation-based, Hindutva-related political construct with structural disenfranchisement of minorities, other vulnerable groups all over India, and those dissidents, intellectuals, who oppose such vision of the state. The nationalist obsession to defend the socio-politically projected version of nation and identity against purposefully constructed enemies is deeply embedded in the far-right political DNA of the BJP, endorsed by Hindu supremacist organisations such as the RSS (National Volunteer Organization, established in 1925). The aim is to trigger emotional, patriotic fervour around the ideologically constructed socio-political architecture, and obfuscate India's remarkable diversity, to shrink the notion of identity to one religion, one language, one (ideologically distorted) history and to institutionally push beyond the margins of the society those who are projected and ostracised as not 'genuine citizens'. Structural exclusion, exacerbated artificial hierarchies, divisive policy which instigates communal violence, victimisation of the selected groups, combined with frayed democratic institutions, are particularly challenging problems for India, where inequalities are historically embedded in traditional sociocultural patterns. The tragedy of British colonialism

DOI: 10.4324/9781003196525-4

with its divide and rule imperative had its contribution *inter alia* to societal polarisation along the communal lines and politically activated religiously-driven nationalisms. We may assume that without this harrowing period of its history, India would be a significantly different country (yet, some populist leaders would probably try to use communal agitation as a political tool), and there is a great likelihood that the partition would not have taken place. Therefore, albeit presently bolstered, the factors contributing to a favourable environment for HR violations in IaJK go much beyond current BJP policies. They need to be viewed holistically, by recognising India's colonial past as well as its historically rooted system of legalised inequalities and highly hierarchical societal structures, state-backed hegemonic policies benefitting the privileged groups, permanent struggle between the powerful stakeholders and popular grievances and the diverse trajectories of resistance against marginalisation. An in-depth analysis of these multidimensional factors goes much beyond the scope of this book; hence, only selected elements of India's contemporary political trajectories will be addressed to provide a discursive framework for HR violations in IaJK.

In independent India, two major competitive political projects have dominated the heated debate over the country's socio-political future. The first assumes struggle for a secular, democratic state with pluralistic society, unifying India's unique diversities and rejecting chauvinism, where all communities can coexist, promoted by Jawaharlal Nehru. Inclusiveness and equality are personified by numerous Indian icons of democratic values, for example, Bhimrao Ramji Ambedkar (1891–1956), politician, jurist, social reformer and (himself a Dalit) staunch advocate of empowerment of the Scheduled Castes, egalitarian society free of caste, gender and religious discrimination. He renounced Hinduism for its historically inherited doctrinaire adherence to untouchability with its structural inequalities and became a Buddhist.

The second rhetoric assumes Hindu civilisational superiority and focuses on imposition of a Hindu-dominated order, largely controlled by the representatives of the upper castes. These two projects are historically ingrained; according to Nivedita Menon (2004: 23), the first relates to a secular, tolerant and inclusive narrative, the second portrays India as a 'pure' Hindu nation, which was infested by the Muslim conquest. These two dichotomic perceptions of India are often unrealistically idealised with reference to a 'glorious past', which is defined in mutually exclusive ways by some secular democrats and by Hindu nationalists in academic as well as journalistic and popular discourses. None of them provides historically correct and scientifically coherent portrayal of India's multi-layered heritage and history, which is abundant with both communal hostility and rivalry, as well as interfaith, multicultural coexistence.

The core element of majoritarian ideology with its communal features lies in the assumption that Indian history was partly shaped by the incessant thousand-year struggle of Hindus with Muslims, where only the former are 'true' patriots, courageously defending what they project as pure

'Indian-hood', against the latter, who are tyrannical, culturally distant and inferior. The proponents of Hindu supremacism adhere to the twin notions of Hindutva and Hindu state (*hindū rāṣṭra*), according to which India should be ruled by Hindu majority.[1] Hindutva-based approach has been discursively invoked and practically materialised with nationalist, religiously motivated zealotic fervour, with substantial qualitative and quantitative augmentation since 2014. The BJP's victory in two successive parliamentary elections and its alliance with Sangh Parivar ('the RSS family'[2]), an umbrella organisation of Hindu nationalists, which *inter alia* includes militant fundamentalists from the RSS, provide a growing space for radicalisation in India. Purushottam Agrawal (2019) regards Hindutva as 'not a spiritual or religious world view but a doctrinaire, authoritarian political programme' and contends it poses a threat to Hinduism and Hindu rich and complex tradition. The ideology of Hindutva was politicised for strategic purposes, and individual political ambitions, by providing identity-based mobilisation of the masses by augmenting nationalist sentiments and linking them with the religion of the majority.[3] The Hindutva cohorts have a vital role in simplifying and reframing the diverse, inclusive national identity to the narrative based on religious majoritarian nationalism, where one group, constituting the privileged majority, claims that it has an absolute right to exercise multifaceted domination in the state and to impose its own vision of the society consisting of 'perfect' and 'pure' citizens. It refers to the narrowly defined spectrum of moral values embedded in conservative religiosity, supplemented with a self-projected version of patriotism, personality cult, with obsessive allegiance to 'One leader, One language, One way of life, One food culture and so on'.[4]

Dibyesh Anand (2011: 1, 13) assesses Hindutva as 'chauvinist and majoritarian nationalism that conjures up the image of a peaceful Hindu Self vis-à-vis the threatening minority Other'. He appositely contends that it generates stereotypes, legitimises violence against Indian Muslims and other minorities and 'normalizes a politics of fear and hatred by representing it as a defensive reaction to the threats supposedly posed by Muslims to the security of the individual Hindus as well as of the Hindu collective'. Anand maintains that Hindutva ideologues want the Hindus 'to "awaken", "arise", recognize the enemies, vote for pro-Hindu parties'. The Muslim and Christian minorities as well as secularists are considered traitors. The Hindutva proponents want to create a Hindu nation, although one does not exist as a conscious corporate body. 'In this sense, while claiming to be a mere representation of the pre-existing nation, Hindutva's main emphasis is on creating this imaginary nation', Anand concludes.

Pursuant to this narrative, the national unification myth requires forceful, supremacist strategies vis-à-vis minorities and all regarded 'anti-India', with structural, institutional, legal, spatial and physical domination. The Hindus are the 'right' and 'pure' citizens of India, whereas the others' rights are regarded as inferior and need to be curbed. Kashmiri Muslims in

particular have to struggle with double stereotypes: as being Muslims and Kashmiri. Both raise utmost suspicion. At the same time, Kashmiri women are viewed as a precious asset by Hindu supremacists. Some of them openly mobilise their supporters to subjugate and intimidate Kashmiri women, for example by encouraging Hindu men to marry them. Following the abolition of Article 370, a BJP politician Vikram Singh, urged party members to marry fair skinned (= beautiful; India's bizarre obsession with fair skin seems unceasing, with a plethora of skin-whitening cosmetics, including those made by the top Western companies, available even in small, local shops—AK) Kashmiri women, cynically arguing that it would serve for their protection.[5] The consent of potential brides-to-be was obviously not evoked. This overwhelmingly misogynist narrative has its dismal contribution to the dispossession of already vulnerable Kashmiri women, who suffer from multifaceted oppression at the hands of practically all sides of the conflict (armed forces, militants and in some cases by largely conservative male family members).

The trajectory of militarised supremacy in Kashmir is predominantly gendered, combined with the will to sustain the Centre's dominant power position to make decisions over what are perceived as the 'assets' of Kashmir: its women, natural resources, land, rivers etc. That approach, manifested particularly by the BJP, but also to a large extend by the Indian National Congress, has further alienated Kashmiri Muslims in the Valley vis-à-vis the Indian state. With trepidation they assume that Hindus from mainland India, whom they regard as rapacious strangers who do not understand the distinctiveness of Kashmiri culture, intend to take over all resources and destroy local culture. Nitasha Kaul (2019) observes: 'Modi is not unique in his understanding of Kashmir as a film set where the Kashmiris have walk-on parts as extras, and where Indian fantasies are projected onto its exotic otherness of "fair women", beautiful mountains, walnuts, and apples. In film and literature, Muslim-majority Kashmir has always been India's Oriental "other", loaded with fantasies of beauty and cruelty as surely as any Ottoman harem in the fervid imagination of Europeans'.

The proponents of hierarchical organisation of the society with supremacy of upper castes unalterably adhere to majoritarian project, use religion to indoctrinate and agitate masses and distort history; they oppose the empowerment of lower castes and suppress those whom they construct as enemies, including Muslims.[6] This political course provides rationale for majoritarian identity, purportedly safeguarding the well-being of the society as a whole, but in fact providing a tool to uphold the status quo, to assure the uninterrupted power and legalised impunity to the privileged and to reject socio-political aspirations of the dispossessed groups. Institutional adherence to such inequalities is tantamount to quashing the objectives and values of a modern constitutional democracy. Systemic dispossession and patterns of discrimination have, therefore, deeper heritage in India; their roots lay in hierarchical caste system, which additionally reinforces the discrimination of certain

vulnerable communities, for example Dalits or Adivasis (indigenous tribal communities; in IaJK Scheduled Tribes are represented among others by Gujjars and Bakerwals[7]).

Jammu and Kashmir (presently the UT) represents a very distinctive and complex case study in the investigation of Hindu majoritarianism and patterns of inequality, which escape the dichotomic simplifications. On the one hand Hindu supremacy is vividly displayed by the centre-led policies vis-à-vis Kashmiri Muslims, on the other—common religious affiliations, manifested by Hindu nationalist BJP and its affiliates, did not lead to empowering or repatriation of Kashmiri Pandits, who were forced by Islamic fundamentalists to leave the Valley in the early 1990s and framed their narratives around the plight of their exile and returning to homeland.[8]

Controlling Kashmir is consistent with both diversity-oriented and supremacist projections of India's political architecture, which, at first glance, may seem paradoxical. While the region's status plays enormously vital ideological and geostrategic role in constructing state-led narrative of India's national pride and its internationally projected image as an inclusive, diverse and territorially accomplished state, it also fits the rhetoric of Hindu chauvinism with its demand of absolute allegiance. Correspondingly, Indian claims vis-à-vis Kashmir do not only derive from Hindu nationalism, symbolised by the RSS and its accolades. They also manifest themselves in Nehruvian approach that Indian policy cannot be based on communal lines: if Kashmir was removed from India's control, only because it has a Muslim majority, it would undermine the whole anti-communal philosophy of India based on secular nationalism. With regard to Hindutva, Swati Parashar (2018: 664) notes that it 'advocates to see the Kashmiri struggle for self-determination and the conflict itself as a threat to the integrity and sovereignty of India'. The omnipresent nationalist agenda adheres to the historical perception and strengthens the cartographical imagination of India as 'Bhārat Mātā' (Mother India), which serves as the ground for the ultimate unity between Kashmir and India.[9] Kashmir incessantly evokes heated discussions engaging, among others, the proponents of Hindutva and rationalists. The latter tend to highlight the gravity of HR violations in IaJK and in general criticise Hindu fundamentalism and shrinking space for democracy in India, for which they often face repressions. In 2010, Arundhati Roy, Booker-prize winner and HR activist, famous for her staunch disapproval of the ruling establishment, who criticised HR violations and questioned that Kashmir is integral part of India,[10] was threatened with arrest by Delhi police on sedition charges. She is regularly accused of anti-state and anti-Hinduism activities by Hindutva zealots. Gauri Lankesh, an outspoken journalist and activist, critical of far-right Hindu extremism, was shot dead in September 2017 outside her home. Her killers were apparently inspired by the belligerent narrative of Sanatan Sanstha, an extremist, Hindu nationalist group (albeit disguised as spiritual) that had identified Lankesh as an 'evil person'. Most probably, the group, in particular its offshoot Goa-based Hindu Janjagruti

Samiti (Hindū Janjāgṛti Samiti), was directly involved in the assassination of Narendra Dabholkar in 2013. He was a Pune-based rationalist and medical doctor, engaged in campaigns against social injustices and superstitions.[11]

The dominant depictions of Kashmir and Kashmiris within the mainland India are embedded in historical and contemporary narratives. They highlight two seemingly diverse features: the beauty and danger. These simplified, binary narratives are intentionally tailored to evoke certain connotations vis-à-vis Kashmir; they oscillate between the idyllic 'paradise on earth' with rich history, enchanting nature and mild climate, and its dystopic obverse: 'the most dangerous place on earth',[12] plagued by separatism and Islamic extremism. The former should be conquered and dominated by the Hindu majority in order to eradicate the latter, personified by a terrorist, pro-Pakistani Kashmiri Muslim.

Kashmir and its interactions with India should not be viewed only through the prism of binary Hindu-Muslim oppositions. The reality is much more complex as in the case of any protracted conflict, where different stakeholders try to safeguard their privileges, materialise self-serving interests, impose ideologically motivated rhetoric, by intentional politicisation of the existing religious or ethnic diversities and by mobilising their supporters. The majority-minority perception of marginalisation and insecurity is also connected with geographical factors. Indian Muslims rather do not associate themselves with the on-the-ground situation in Kashmir, and consequently, they are not automatically supportive of Kashmiri Muslims' calls for *āzādī*. In his memoirs, Kashmir-born Basharat Peer (2010: 62), acknowledges: 'Despite their insecurity and despair in India witnessing the rise of Hindu nationalism, most of my Indian Muslim friends were Indian nationalists. They disagreed with me and other Kashmiri students about our ideas of independent Kashmir. They were afraid that a secession of a Muslim majority Kashmir from India would make life worse for India's Muslims'. Indian Muslims, especially in times of exacerbated persecution, regard their own safety in mainland India as much more crucial than a struggle in distant Kashmir Valley. This approach may be intensified by the fact that the BJP's policy vis-à-vis Kashmir is regarded appropriate by majority of Indian citizens; there is popular consent to operate with an iron fist against Kashmiri Muslims and their rebellion. At the same time, the news on Muslims' persecution in mainland India reinforces the anti-Indian sentiments in the Valley and provides support to the militancy and radical Islam.

Since the BJP won the elections in 2014, the presence of state ideology in the institutions, pro-government media, political parlance, education curricula[13] etc., was intensified with the aim to socially normalise dehumanisation of those regarded as enemies of the state. It facilitates the public approval for the implementation of hegemonic policy, combined with 'us versus them' approach and guarantees majoritarian support for the uncompromising emergency measures taken against the opponents: ethnic/religious minorities, people living in strategically important but turbulent regions such as

Kashmir, or against those who oppose the government's policies. Political authorisation of hegemonic majoritarianism leads to an escalation of targeted aggression against minorities. In February 2019, Human Rights Watch (HRW) reported a surge in hostility since the BJP government took power. At least 44 lynching cases of minorities were reported between May 2015 and December 2018. Additionally, hundreds of people were injured in religiously motivated attacks. Most of the victims were Muslims, who are the country's largest religious minority (approximately 14%).[14] The economic slowdown is another factor which is interconnected with aggressive communalism; state-supported persecution of minorities enables the government to divert attention from sluggish economy, rising unemployment and lack of fulfillment of the BJP's development-oriented electoral pledges. In December 2019, India's GDP grew at 4.7%, the weakest pace in seven years. In 2017–2018, the unemployment rate in India reached 6.1%, the highest in 45 years. It is difficult to foresee the effect of the coronavirus pandemic, but it may be another blow to India's economy, especially its middle class.[15] Providing salaried jobs for India's young population (one-third between 15 and 24 years old, more than 10 million entering the labour market yearly) remains another crucial, yet unmet challenge. Some young men, often unemployed and unable to materialise their aspirations, are particularly prone to religious radicalisation. Feeling empowered by politically propitious circumstances, they tend to divert their anger and frustration against the vulnerable: minorities and women. Control over the latter might be exemplified by the conspiracy theory and communalised actions of Hindutva hardliners in India, banning Hindu women from interacting and marrying Muslims, whom they portray as promiscuous and accuse of 'love *jihād*': seducing young women in order to convert them to Islam. The purported 'protection' of women is in fact tantamount to misogynist approach that curbs their freedom with respect to independent life choices and decisions, infantilising them as prone to 'Muslim Romeos' and, last but not least, aims to control their bodies. Another campaign with communal background is *ghar-vāpsī* ('return to home'), which aims to convert non-Hindus with the assumption that by renouncing other religions they are 'coming back home'. It is yet another manifestation of the far-right ideology, projecting and praising the glorious Hindu past of India.

The political climate of majoritarian nationalism exerts increasingly strong influence on domestic narrative on fragile issues, such as Kashmir, where any discourse which questions the state-led approach, or any attempt to critically assess New Delhi's policies, is considered unpatriotic and anti-India. It fosters self-censorship, leads to silencing of the opponents of contentious nationalist rhetoric and empowers those (academics, TV anchors, journalists, artists etc.) who adhere to the official, state-promoted discourse.

India's democratic backsliding is interconnected with supremacist political trajectories and receives growing international coverage. In 2020, University of Gothenburg-based V-Dem Institute, which exposes global democratic decline and measures several types of HR violations,

enumerated India (along with Hungary, Turkey, Poland, Serbia, Brazil) among the fastest autocratising countries in the world, assessing its status as electoral democracy due to severe limitations on media freedom, increased pressure on the opposition and civil society.[16] In 2021, V-Dem dedicated a separate chapter to India ('Democracy Broken Down') downgrading it from 'electoral democracy' to 'electoral autocracy'. The cases of using sedition or anti-terrorism laws (such as the UAPA, vide infra §3.4) to imprison political opponents and critics, harass the journalists, intimidate academia and civil society were given as examples of accelerated autocratisation. Growing censorship on issues viewed as 'fragile' by the government with simultaneous empowerment of the organisations aligned with Hindutva was also emphasised. V-Dem highlighted significant deterioration particularly since the BJP-led Hindu nationalists took power in 2014: 'India's level of liberal democracy registered at 0.34 by the end of 2020 after a steep decline since its high at 0.57 in 2013'. A 23 percentage point drop was assessed as 'one of the most dramatic shifts among all countries in the world over the past 10 years'.[17] Not only downgrading, but also putting India on par with Pakistan ('India is, in this aspect, now as autocratic as is Pakistan, and worse than both its neighbors Bangladesh and Nepal') aroused the ire and evoked harsh reaction of Indian government, which staunchly rejects any international criticism of its human rights (HR) and democracy record.

Due to shrinking space for media independence and pluralism, accompanied by the attacks against journalists, in the annual World Press Freedom Index, compiled by Reporters without Borders since 2002, India' position has also declined. In 2003, it was ranked on 128th position (with Pakistan). In 2010, India held 122th position, but in 2011, it was on 131st position, in 2013 and 2014 on 140th position, in 2016 on 133rd position, in 2017 on 136th, in 2018 on 138th in 2019 on 140th and in 2020 on 142nd (out of 180 countries). Again, India is close to Pakistan in the ranking, which in 2020 held 145th position (142nd in 2019). Notably, in this index, not only the country's global position is crucial, but also the score which each of them gets, where zero is the best possible result. For India since 2010, it oscillates between 38.75 (in 2010) and 45.33 (in 2020), so there is a deteriorating trend, yet curtailing or censuring press freedom was also present under the Congress Party-led rule. India's (and Pakistan's) position in this ranking speaks volumes about the persistent harassment of free media in both states.[18] Markedly, the majority of Indians seem to neglect the shrinking space for freedom of speech. According to the Pew Research Center poll, referring to public opinion in India, published on 25 March 2019, 58% of respondents said their rights to express their own views were protected very or somewhat well; only 26% took the opposite view.[19]

The anti-Muslim rhetoric in which pro-government media have their share has largely contributed to the rise of hate crimes against this religious minority in India. The AI's report titled *Halt the Hate* informs about 902 incidents of alleged hate crimes between September 2015 and June 2019. From January to June 2019 alone, 181 hate crime incidents were recorded—a number close

to previous three years' annual counts, with 218 incidents in whole of 2018, 212 in 2017 and 240 in 2016.[20] The crimes include mob lynching of Muslims accused of eating beef by cow vigilantes (according to Hindu tradition cows are sacred), self-appointed defenders of faith, often young men who in reality want to indulge in violence or solve their personal conflicts. The International Religious Freedom Report for 2018, published by the US Department of State, stated that the Constitution of India mandates secularism, but 'some senior officials of the Hindu-majority BJP made inflammatory speeches against minority communities'.[21] The assaults against minorities, including killings, mob violence and intimidation were emphasised, along with the perpetrators' impunity. The communal antagonisms serve as an excuse for the increased societal polarisation and 'saffronisation', propagated by hard-line Hindu nationalists. The attacks carried out in India by Pakistan-sponsored *jihādists*, such as Lashkar-e-Taiba (LeT), Jaish-e-Mohammed (JeM), Hizb ul-Mujahideen (HuM) and others (for instance 1998 Chamba massacre, when thirty-five Hindus were killed by HuM in Himachal Pradesh, 2001 Indian Parliament attack in New Delhi, 2006 Varanasi bombings, 2008 Mumbai attack, among many others), reinforced the generalised and stereotypical image of Muslims as anti-India, potential fifth-column of Pakistan and enabled to disseminate the narrative of their collective responsibility for radicalism. The rising climate for intolerance and rejection of multiculturalism has particular impact on Kashmir issue and provides framework for the normalisation of abuses. Embodied by the slogan *Pakistān aur kabristān* (Pakistan or graveyard), it is aimed at threatening the Muslim minority, which should be expelled to Pakistan if they are unable to accept the majoritarian character of *Bhārat* (Hindu India).

Narendra Modi's government declares to introduce reforms which will lead to glorious future of *Bhārat*. This rhetoric is occasionally supplemented by Pakistan and Kashmir-related connotations. Nitasha Kaul (2017: 536) writes: 'The demonetization policy declared by Modi in November 2016, was presented as a "surgical strike on black money" (in clear reference to a retaliatory strike in PaJK, after the 18.09.2016 JeM militant attack on Indian army base near Uri in Baramulla district—AK). Coming not long after the summer of intense killing and maiming by the indiscriminate use of pellet guns by Indian security forces on the Kashmiris (who are seen as 'traitorous Muslims') staging an anti-India uprising for freedom, and the "surgical strike on Pakistan" that successfully deflected the world's attention from the atrocities in Kashmir, the metaphor of the surgical strike used this time for the economy, served to convey the move of a decisive leader'. Structuring domestic political and socio-economic discourses within the framework of persistent regional enmities, with finger pointing at the arch enemy, Pakistan, and the Kashmir imbroglio, suggests that questioning of the government's internal policy is equally unrecommended, deemed unpatriotic.

Hindu nationalism is deeply anchored in the current discourse of territorial supremacy with its 'Kashmir belongs to India' narrative resonating

particularly in the Valley.[22] The communal and ideological aspects of the conflict are exacerbated by Hindu nationalists in India, to the extent that violence against minorities is normalised in the name of personal, communal, national and international security[23] and supremacist religion as defined by the RSS and other Hindu orthodox organisations, is politicised to suppress religious minorities and dissidents. Occasionally communal violence reaches its peak, for example in 1992, during the destruction by agitated mob of the 16th-century *Bābrī Masjid* (mosque) in Ayodhya (Uttar Pradesh) in order to 'liberate' Ram's birthplace from the influences of Islam.[24] The final decision regarding this conflict came in 2019, when India's Supreme Court gave ownership of the disputed religious site to Hindus for the construction of a temple. In 2002, communal violence erupted in Gujarat (790 Muslims and 254 Hindus killed), with the authorities (the then Chief Minister Narendra Modi) unable to prevent retribution after Muslim mob burned the train with Hindu nationalists returning from Ayodhya. The purposeful policy of invigorating the most regressive elements within Hindu and Muslim communities and the emotional, populist narrative enable the government to divert attention away from actual economic and social problems and from brutalities perpetrated in Kashmir. It is probably of no coincidence that the SC decision came shortly after the bifurcation of J&K. On 5 August 2020, a year after, the construction of Ayodhya Ram temple was announced in Ayodhya, serving as a triumphant manifestation of state-promoted nationalism and supremacy over Muslims.

In a bid to get international support for India's stance on issues related to Kashmir and to project the 'normalcy in Kashmir' narrative, a delegation consisting of the MEP's was invited to the Valley in October 2019. Twenty-seven members mostly representing the 'Identity and Democracy' political European Parliament's group (far right-wing, populist and largely Islamophobic) from the United Kingdom, France, Germany, Spain, Poland and Italy paid a fully curated visit to Srinagar (at the same time Indian government did not grant such permission to the representatives of the Congress Party, which evoked outrage among the opposition politicians). The visit was reportedly organised by the Prime Minister's Office and the National Security Adviser through an NGO, the Women's Economic and Social Think Tank (led by a pro-Modi businesswoman, Madi Sharma). The invitation of selected foreign dignitaries marked as Angshuman Choudhury and Prannv Dhawan put it, 'a dangerous ideologization of India's foreign policy'.[25] Some authors positively assessed the visit, though: Kumar and Chari claimed that it 'served its purpose in mobilising international public opinion and understand the rationale behind India's decision' as internal matter with 'New Delhi's contention that the global community should not get into an advisory mode regarding J&K'. The authors adhered to the BJP's rhetoric by questioning HR violations, blaming Pakistan and by condemning the opposition parties in India, which raised concerns over oppressiveness in Kashmir, for anti-national activities and projecting false image of India's policy in the West: 'The "stories" of mass detention, human rights

violations, indiscriminate killing of innocent civilians by Indian armed forces in J&K being spread shamelessly by heavily paid Pakistani PR agencies are finding their way into social media, courtesy, the so-called progressive liberal-left leaning minority fringes in the Indian political arena'.[26]

While elucidating the key manifestations of far-right rhetoric and its importance in channelling cultural nationalism, special attention should be turned to an amplified politisation of popular Bollywood cinematography (Mumbai-based commercial Hindi cinema), which partly became a proliferation tool of Hindu nationalist agenda, often combined with aggressive anti-Muslim and anti-Pakistani rhetoric. It seems relevant to very briefly refer to selected movies, as popular Indian cinematography has a distinctive influence on constructing socio-political attitudes. Indian filmmakers' interest in Kashmir and fascination of the region is not a new phenomenon. Already in the 1960s, some movies about Kashmir portrayed whitewashing simplified, clichéd, orientalised, romanticised depiction of the Valley—highlighting its scenic beauty, which makes an interesting tourist destination: Kashmir culture was often reduced to eye-catching landscapes. *Arzoo* (1965) presents Kashmiri houseboat owner, but the main character in an Indian tourist. *Kaśmīr Ki Kali* (1964) also shows stunning landscapes and Kashmiri beauty.[27] Notably, but unsurprisingly, the post-1989 movies about Kashmir became more communalised and politicised, dominated by the narrative of destructive militancy in the beautiful paradise versus brave Indian army. This image was supplemented with depiction of Kashmir as a most dangerous place, a potential flashpoint[28] and Muslims as terrorists and enemies. Vidhu Vinod Chopra's *Mission Kashmir* (2000) is such an example: showing the militancy in the Valley symbolised by a suggestive bomb blast on *shikara*—Kashmiri boat—on Dal Lake. The terrorist leaders were shown issuing fatwas, which cost life of an innocent son of a policeman. Markedly, the early 1990s turmoil in the Valley was screened also in 2020: another movie directed by Chopra portrayed Pandits exodus in love story titled *Shikara. The Untold Story of Kashmiri Pandits*. Shoojit Sircar's directorial debut, *Yahaan* (Here; 2005), was a war drama combined with gendered and communalised love story, depicting Kashmiri girl infatuated with an Indian army commander, posted in Kashmir. Such romance itself is a strong taboo in Kashmir, namely for Kashmiri Muslim men, who debar Kashmiri women from having affairs with any outsiders, especially with Indian soldiers. It is yet another example of Kashmiri women being affected by culturally and religiously motivated sense of belonging, which prohibits them from making independent life choices, because otherwise, 'conquered' by the strangers, they risk being ostracised and excluded by their community.

Against this backdrop, one meaningful exception needs to be invoked: the portrayal of Kashmir Valley and its problems in Vishal Bhardwaj's poetic drama film, titled *Haider,* based on Shakespeare's tragedy *Hamlet* and Basharat Peer's harrowing memoir, *Curfewed Nights*. Released in 2014, it was an outstanding depiction of the turbulent, militancy-affected Kashmir in the mid-1990s. It showed the tragedies living in conflict zones brings: torture

and killings, betrayed friendships, struggle to retain humanity, common people caught in the ruthless war between the separatists and the armed forces. The reception of the movie to a large extent reflected the polarisation of Indian society. On the one hand, Bhardwaj was immediately accused by Hindu nationalists of sympathising with Islamic terrorists, presenting negative image of the Indian army and ignoring the Pandits. On the other, the filmmaker garnered much appreciation from the intellectual elites and civil society for speaking out and audaciously challenging the mainstream narrative.

The way in which the other 'distant regions' are whitewashed by popular Indian cinematography is also an interesting phenomenon, worthy of brief exemplification. Ladakh, another piece of the former state of J&K, was presented to mainstream Indian consciousness by the 2009 Bollywood film *3 Idiots*, shot partially in the region. This popular Hindi language movie resulted in influx of tourists to Ladakh, not interested in broadening their knowledge about the region's history or its distinctive socio-cultural identity, but rather willing to take selfies in front of the school featured in some key scenes of the film.[29] Local activists blamed the visitors for contributing to water pollution, littering, intensified traffic. 'Rather than being appreciated for a unique culture and beautiful scenery, Ladakh became a backdrop for a Bollywood film', Sudha Vasan (2021: 234) sorrowfully contended.

The simplified, divisive storylines of some Bollywood productions, ignoring India's religious diversity and socio-cultural richness go beyond IaJK. A noteworthy manifestation of communal dissections in pop culture and illustration of blind zealotism it evokes, was *Padmaavat*, the multimillion Bollywood production released in February 2018. It portrayed the most gruesome ideological projections constructed by Hindutva radicals, where non-Hindus, personified as Muslim Sultan Alauddin Khilji (Sulṭān ʿAlāʾ-al-Dīn Khaljī) and his cohorts who invade 'pure' Hindu India, were unwelcome, evil strangers. Ironically, before the release of this film, some Hindu radicals organised violent protests across the country accusing the movie of dishonouring the dignity of the Rajput queen in an alleged intimate scene with the Sultan. No such scene appeared in the movie. The protests proved how easy it is to brainwash the masses and use them for political manoeuvring and how useful political tool it may be in the hands of a nationalist, divisive leadership. It turned out that instead of protesting, the Hindu radicals should rather have praised Sanjay Leela Bhansali's movie as a useful propaganda tool for supporting their anti-Muslim narrative. From the first minutes until the last second the story was presented in a simplistic, dichotomous way. Rajputs represented the best features of Hindu heritage: exceptional courage, fairness, kindness, almost divine purity and noblesse, whereas Muslims were treacherous, savage, aggressive, deceitful and promiscuous invaders. 'Rajputs sacrifice their lives to spread light and uphold truth and freedom'; almost every minute the viewer was bombarded with such assertions which came from the Rajput heroes. The rest of the screen time was devoted to depiction of tenebrous world of the Sultan Khilji and his adherents and the clash between these

two worlds. The interpretation of such a dichotomy is obvious: these violent intruders do not belong to India as all its citizens were originally Hindus. This divisive, communal narrative has been bolstered as an inseparable part of India's political reality under the BJP, manifested by pro-government media, but at the same time, generating outrage across the ethnically and religiously diverse country. Being a tribute to Rajputs (virtuous and pure Hindus), *Padmaavat* with its 'good versus evil' dichotomy was aimed to undermine the indisputably syncretic Hindu-Muslim ethos, which had developed in India throughout centuries. As a result, it contributed to an escalation of the already tense atmosphere, bolstered the anti-minorities hate speech and communal aggression. Being an explicit manifestation of Hindutva-correct whitewashing of the reality, it additionally affected the perception of Kashmiri Muslims, who had already been labelled as terrorists and agents of Pakistan.

Another example of a movie with politically tinted narrative, supporting the objectives of the ruling establishment and praising the Indian army, was *Uri. The Surgical Strike,* released in January 2019. It was a patriotically fervent display of proud and powerful *Nayā Hindustān:* a heroic portrayal of the surgical retaliation campaign against Pakistan after the militants' attack on Uri army base in 2016. Notably, following the revocation of the Article 370, the filmmakers were rushing to cash on titles related to the event. According to a report in the Mumbai Mirror, over 50 titles were registered at various Hindi film bodies such as the Indian Motion Pictures Producers Association (IMPPA), the Producers Guild of India and the Indian Film TV Producers Council (IFTPC).[30] Opportunist attitudes and pro-government fervour of the directors manifested itself by various titles proposals glorifying the BJP's policies, for example *Article 370 Abolished* or *Kaśmīr hamarā hai* (Kashmir Is Ours).[31] It can be assumed that such films, apart from endearing the authors to the government, aim to mobilise the audience around majoritarian supremacism, bolster one-sided perception of the situation and increase popular support for the BJP's policy in Kashmir.

General societal attitudes vis-à-vis fragile issues such as communalism and Indo-Pakistani relations etc., are significantly influenced by popular cinematography, film directors and movie stars, who often enjoy semi-divine status in both countries. Notably, in the aftermath of violent clashes between the police and students from New Delhi's Jamia Islamia College, who protested against the anti-Muslim discriminatory Citizenship Amendment Act (CAA)[32] in December 2019, some intellectuals accused the artistic community (especially the graduates of this university, actors Kabir Khan and Shah Rukh Khan) of remaining silent.[33]

3.2 Militancy and Islamisation

The situation in the Valley was rapidly deteriorating towards the end of the 1980s and finally turned into a 'smouldering volcano',[34] which erupted in 1989–1990.[35] The militancy had detrimental impact on HR situation

affecting all indigenous inhabitants, irrespective of their religious affiliation. Political movement against what is regarded by Kashmiri Muslims as India's occupation encompasses different resistance activities, including an armed struggle.[36] There are contrasting views on what is regarded as freedom in Kashmir. The first is represented by Islamists who regard Pakistan as a patron state and received multi-layered support to precipitate anti-India insurgency. Historically inherited Pakistan-supported proxy strategy with its obsessive Indio-centrism[37] has profoundly influenced the socio-political dynamics in the region, with its contribution to the militancy, communal violence and abuses. The second view is embodied by Kashmiri nationalists and secessionists (some of them represent Kashmiri diaspora in the West), who commonly adhere to the concept of independence, a federation of Kashmiri states constituting the erstwhile PSJ&K and view both Indian and Pakistani (and growingly Chinese in PaJK) establishments as occupying forces, materialising their own interests with utmost disparagement of HR. The third demands greater autonomy within India/Pakistan.

A variety of attitudes existed in the Valley as a response to Indian policy; some young Kashmiri Muslims joined the militancy and went to Pakistan to receive ideological and military training, some remained silent and abstained from policy, some decided to embrace patronage and cooperate with the Indian authorities.[38] The lack of effective governance, transparent and accountable institutions, combined with the policies of central authorities and agencies that reap excessive profits from managing the resources and materialising their objectives, adversely affected the situation in Kashmir. It created a sense of disillusionment towards the centre's policies and distorted, corruption-prone system, with unexpected cooperation patterns and diverse attitudes among Kashmiris who try to cope with permanent threat which resonates in every area of daily life. In his reportage from Kupwara district, Sanjay Kak, a film director and HR activist, spoke to a local schoolteacher. 'Not everybody resists', the interviewed said. 'There are advantages to giving in. Did you see those bright, new red roofs, sticking out in every village as you drove through the countryside, those big houses that are being built? Who are they? Those are the people who benefit from collaborating. They are contractors of coal and wood and supplies in Kupwara'.[39] Christopher Snedden (2015: 250) narrates how money influenced the insurgency dynamics: 'anti-India militants got money from Pakistan to fight in Kashmir; some Indians patrolling the LoC allegedly took bribes to allow militants to cross into Indian J&K; Indian paramilitary forces received money, allowances and equipment to fight in J&K; Kashmiris made money out of having such a large Indian military and paramilitary presence throughout the Kashmir Valley; and, some Kashmiris also got money from providing sanctuary and support to anti-Indian militants'. A portrayal of diverse attitudes and moral conflicts is offered by Shashi Warrier (2008) in the novel *The Homecoming*. The author presents a dialogue between two Kashmiris: Hamid and Muhammad. The former, who

comes to Srinagar after having lost its property in Jammu's Rajouri due to LoC (Line of Control a *de facto* border dividing Kashmir between India and Pakistan) shelling, emphasises he wants to live in peace and to meet relatives on the other side of the Line, yet the state does not want that. The latter, previously an anti-India protester, now aspiring politician, has joined a pro-India party, compromising his ideals for political career and personal gains.

With the rise of militancy, indigenous Kashmiris became either helpless witnesses or direct participants of the clashes between ideologically opposed organisations accompanied by the influx of foreign, culturally distant insurgents, who infiltrated the LoC. The Kashmiri youth who joined them and supported pro-Pakistani militant organisations have refashioned an insurgency as an Islamic *jihād*; gradual Islamisation of the formerly primarily secular struggle was accompanied by growing criminalisation, which turned some civilians against the insurgents, who, in the search for money, resorted to kidnappings, stealing food from the locals, etc. Notably, local youth risking their lives in the clashes with the Indian armed forces faced resistance from their families: objections were raised particularly by the elders.[40] Once the vicious circle of state-imposed repressions intensified with fake encounters, thousands of people enforcedly disappeared, or extrajudicially killed, the fighters eventually received more widespread public support, yet the families often voiced disapproval of their sons taking up guns.

The militancy deescalated around 2003–2005, with (temporarily) reduced ISI (Pakistan's premier intelligence agency) support and the (failed) peace process attempts between India and Pakistan. Since 2008–2010, the new generation of Kashmiri youth, disenchanted with lack of economic opportunities, protracted militarisation and determined to defend their rights, gave the insurgency a different dynamics. The omnipresence of various armed forces in the Valley, responsible for frisking and torturing the alleged militants, subduing popular dissent, imposing curfews and blockades had significant contribution to the radicalisation of Kashmiri freedom movement. A new wave of protests started, different than in the 1990s, highlighting a more indigenous character of the struggle, with wide use of social media and other modern means of communication. The killings of civilians and popular local militants bolstered Kashmiri Muslims' notion of collective victimhood in the Valley and led to massive rallies, frequent confrontations with protesters pelting stones against the armed forces.

Few of such escalations should be enumerated:

- 11 June 2010: The killing of a 17-year old Tufail Matoo, which triggered popular protests in the Valley, particularly in urban areas of Srinagar, Baramulla and Sopore. The victim was on his way back from school and had nothing to do with the militancy. It was a culminating point for the massive rallies, which Indian authorities tried to crush by strict curfews and counter-insurgency operations. In July that year police and paramilitary forces were supported by the army, which used pepper spray,

pellet guns and live ammunition. It was followed by the escalation along the Indo–Pakistani border. Between June and October 2010 more than 120 people were killed (mostly young), 3500 arrested, 120 booked under the JKPSA. The towns were kept under curfew, Internet and phone services were cut, the injured were filling up hospitals.

- July 2013: Opening fire against civilians. Ramban incident took place when the BSF opened fire on unarmed protesters in the city located 150 km from Srinagar. The clashes erupted following the arrest of a local religious leader and the alleged desecration of the Quran. Four protesters were killed and 42 were wounded.[41]
- 8 July 2016: Burhan Wani case. The young commander of HuM, with bounty on his head, was killed by the Indian armed forces. As a 'poster-boy' of resistance, romanticised by his supporters, popularly known as 'Che Guevara of Kashmir', he had become popular thanks to social media. His killing and funeral (attended by some 200,000 people) caused ferocious agitation and triggered another 4-month phase of violence with escalation of protests and even an attack on a security forces camp. This time the demonstrations were held more to provide support to the famous militant, unlike in 2010 and 2013, when they were aimed to protest against the killings of innocent people and lack of justice.[42] The army and CRPF launched an anti-militancy campaign, named Operation All Out; they were using pepper spray, pellet guns and live ammunition. Wani's killing led to explosion of massive protests and support for the militants, unobserved since the 1990s, also in rural areas, countless *hartals* (general strikes), stone throwing protests, etc.; 36 people were killed in just 6 days between 9 and 15 July and 3500 more were seriously injured, including 1500 security personnel.[43] For some Kashmiri Muslims, Burhan Wani became a symbol of despair and resistance against injustice, which incites young men, often educated, to discard their aspirations and turn to violence. For example, in May 2018, Mohammad Rafi, a researcher from Kashmir University, joined the militants only to be killed in an encounter after a few days. Notably, before he chose to fight, he used to quote the American historian, pacifist and civil rights campaigner Howard Zinn and had critically assessed violent means of resistance, warning against stone throwing.

The militants and hard-line separatists have their own inglorious contribution to the HR violations in Kashmir. The HRW (2006b) highlighted that around 1989–1991 most militants were Kashmiris from central Valley, including Srinagar. Even if they joined local groups such as HuM they were mostly secular nationalists seeking the independence of Kashmir; the indigenous Jammu Kashmir Liberation Front (JKLF) was the engine of the Kashmiri movement. The situation evolved with the ISI-supported establishment of Muttahida (United) Jihad Council in 1994, an umbrella organisation of the Islamist groups active in Kashmir (it *inter alia* included

the HuM, Harkat ul-Ansar, Jamiat ul-Mujahideen, Al Badr and Al-Jihad). The militants (foreign *jihādists* or radicalised Kashmiris trained in AJK) with support from the Pakistani military-ISI establishment and some local pro-Pakistani separatists further communalised the dispute by attacking Kashmiri Hindus (and vandalising their temples), and Muslims who did not follow fundamentalist agenda, government offices, and cinemas which they considered un-Islamic. Moreover, they forcibly imposed *hartals* on the local people.[44] Matthew Webb (2012: 44–45) corroborates that from the inception of the uprising, the militants tried to disrupt daily life by destroying bridges, shops, schools and government buildings. They attacked intellectuals, political activists accusing them of cooperation with Indian parties and participation in election rigging in Kashmir and resorted to targeted killings, punishing all those who were considered traitors to their cause. The murder of Mushir ul-Haq, vice-chancellor of the University of Kashmir, on 6 April 1990, filled Kashmiri elites with fear. On 21 August 1991, Mohammad Yusuf Halwai, a National Conference member was killed in Srinagar. Some encounters with the armed forces resulted in destruction of property and the army's retaliatory assaults against civilians. The demolition included places crucial to Kashmiri culture and heritage: for example, the city of Charar-i-Sharief was burned in 1995 during such violent clash, including the famous 700-year-old wooden Sufi shrine, one of the holiest in Kashmir, and adjoining mosque, as well as at least 800 residential houses and hundreds of shops.[45] Trying to wreak havoc and impose their demands on the authorities, the militants resorted to the attacks against the foreigners. On 4 July 1995, six Western tourists (two British, two American, a German and a Norwegian), who had gone trekking, were abducted in Anantnag district by Al Faran, a previously unknown Islamist separatist outfit. The kidnappers demanded (unsuccessfully) the release of radical Islamists, including Pakistani-based Masood Azhar. Norwegian man was beheaded and the initials of the group were carved in his chest, four others were killed and only one managed to escape. This brutal crime received wide international coverage. In general, Pakistan's sponsored Islamisation of the Kashmiri movement did not serve well the Kashmiri cause regionally and globally. The international apprehensions towards Islamic terrorism and pan-*jihādist* agenda were exacerbated in the post-9/11 era, following the Al Qaida WTC attack in the United States, and other terror acts in Europe and India. The fact that Osama bin Laden found safe haven in Pakistan, tarnished the country's international image and indirectly weakened its position on Kashmir.

Pakistan, unwavering in its traditional revisionist tactic vis-à-vis Kashmir, used the opportunity provided by escalated tensions in the Valley and in the mid-2010s the ISI's support for the militancy reached the intensity unseen for more than a decade.[46] It had a twofold result: first, a noticeable pivot of some Kashmiri radicalisation-prone youth towards extremist approach of *jihādist* groups and second, a staunch rejection of Islamic radicalisation by others. By joining or praising Islamist groups, such as LeT or JeM,

some young Kashmiris have turned to radicalism and Pakistan-supported revisionist agenda, which largely questions the actual quest to empower the Kashmiri people and safeguard their constitutional rights. The Islamisation trends among some Muslim teenagers in the Valley intensified noticeably after 2017 (half of the Valley's population was under 20 years of age). One of the HuM leaders, Zakir Bhat 'Musa', rejected the political or nationalist character of the militancy and clearly defined the purpose of Kashmiri struggle: to impose shariah law and reject democracy; moreover, he urged women, who also participated in protests, to stay at home and wear the veil.[47]

In an important and noteworthy initiative with a potential to dissolve militancy, those former insurgents who decided to surrender were provided with a chance to go back to normal life and employment, through vocational training, monthly stipends, counselling etc. For example, in 2004, such rehabilitation policy was applied by the then Mufti Mohammad Sayeed's JK PDP (Jammu and Kashmir Peoples Democratic Party) administration. The reintegration initiatives were also implemented by Omar Abdullah's government in 2010 with the aim to allow the return of former militants who had crossed the LoC to Pakistan after 1989 (*vide infra*, §5.1). The rehabilitation projects were continued by Governor Satya Pal Malik in 2019, yet their successful implementation, which could include the ex-fighters and their families, remains a fundamental challenge after J&K's bifurcation.

3.3 Militarisation and armed forces impunity

New Delhi uses all available political, legal and extra-legal tools to strengthen its control over Kashmir; this policy often bears resemblance to a colonial, heavy-militarised style of multi-dimensional supremacy.[48] In such circumstances, the armed forces do not only serve as an instrument for external defence and for helping to keep law and order within the state, but are used as a state agent of domestic repression, with major purpose to maintain strict control over the citizens with the support of multiple legal instruments at their disposal, and curb any dissent which is automatically portrayed as foreign-sponsored, anti-government and anti-state.

In the mid-1990s, during the peak of the anti-India militancy in the Valley, Robert Wirsing (1995: 162) maintained that the violations perpetrated by the soldiers dispatched in IaJK take different forms and arise from various circumstances: (1) the international character of the Kashmir dispute with the fact that Pakistan 'is actively intervening in the insurgency and that there are major and unavoidable strategic and military pressures on the security forces resulting from this intervention'; (2) the character of the security forces themselves with the deep-rooted tradition of using violence and brutality, (3) the ethnoreligious differences which augmented distrust between the forces deployed in Kashmir, who often come from distant parts of India, and the mostly Muslim residents of the Valley, (4) the inexorably severe nature of the counter-insurgency operations, which bring various

opportunities for multifaceted HR violations. All these multidimensional aspects are profoundly ingrained in the nature and character of the Kashmir conflict and will not simply disappear when the popular rebellion is quelled by counter-insurgency operations and heavy-handed policies with all tools of subjugation which stay at New Delhi governments' disposal.

Basharat Peer (2010: 18), who spent his childhood in Kashmir, witnessed the tense atmosphere of militarisation at the beginning of the insurgency: 'almost every day the soldiers patrolled our village in a mixture of aggression and nervousness, their finger close to the triggers of their automatic and semiautomatic machine guns. Military and paramilitary camps sprouted up in almost every small town and village'. At the peak of the early phase of militancy in the Valley in the 1990s, the military and paramilitary forces not only numerously clashed with violent Pakistan-trained militants, but also opened fire on unarmed people, protesting against the imposed restrictions and arms forces' violence. Among many such tragedies, the Gawkadal bridge massacre on 21 January 1990 should be recalled, during which the CRPF personnel indiscriminately opened fire on people protesting against raids, house-to-house searches, arrests, and other forms of oppression. A total of 51 civilians were killed. Peer (2010: 118–119) recalled an appalling account of this incident from a survivor, Farooq Wani, an engineer working for the state government, who joined the procession on his way to his uncle's house and was later shot: 'bullets whizzed past my ears. The bridge was covered with bodies and blood. The CRPF men continued firing. I saw more people falling, closed my eyes and pretended to be dead. … An officer was going from body to body, checking whether anyone was alive …I lay still, and from the corner of my eye, saw him firing more bullets every time he found a sign of life in an injured man'.[49] In another bloodshed, on 25 January 1990 the Border Security Force (BSF) opened fire in Handwara and killed 25 protesters. A total of 33 protesters were killed and 47 injured on 1 March 1990 at Zakoora Crossing and the Tengpora Bypass Road in Srinagar. When unknown attackers killed a leading Muslim Kashmiri cleric, Mirwaiz Maulvi Farooq in Srinagar, in May 1990, approximately 200,000 Kashmiris attended his funeral (similarly to Burhan Wani's funeral in 2016). Indian paramilitary forces opened fire on the mourners; 20 people were killed and hundreds were injured. Christopher Snedden (2015: 249) argues that this event exacerbated the militancy, which received more local support.

On 6 January 1993, 55 Kashmiri civilians were killed by BSF in retaliatory massacre in Sopore, in revenge for an earlier security forces encounter with separatists. Hundreds of shops and houses were torched.[50] The government tried to justify the deaths and fires by encounter with the militants, during which an explosives cache owned by the rebels blew up and spread the fire, but dozens of civilians' bodies riddled with bullets gave the lie to this version. Later, the government acknowledged the BSF's responsibility for the massacre, yet practically nobody was punished adequately to the committed crime.[51]

On 22 October 1993, the 74th Battalion of BSF opened fire to disperse crowds and killed at least 37 (the AI claimed 51 people were killed) civilians in Bijbehara (Anantnag district) and Srinagar during protests over the army siege of the Srinagar-located Hazratbal Mosque. Dozens of people were wounded. The HRW cited a 1993 US Department of State country report on HR in India which referred to the alleged Bijbehara encounter with militants: 'despite government claims that the security forces were ambushed by militants, only one BSF sub inspector was injured'.[52] Again, nobody was punished for the crime: 'all those charged with murder were acquitted by the General Security Force Court'. The government provided the standard 100,000 rupees [roughly US$4000 at that time] as compensation to the relatives of the killed civilians, others received compensations for injuries.[53] Such events exacerbate the local communalised narratives, where oppressed Kashmiri Muslims struggle against Hindu supremacism. People killed in massacres and encounters, both fake and real, are portrayed by locals as 'martyrs',[54] those who died defending Islam and local culture against India; martyrs' graveyards are sanctified as commemoration of oppression.

Angana Chatterji (2011: 146) corroborates that the Indian state's military governance penetrates every facet of life; the military and paramilitary forces occupy strategically important locations and take control over properties. Surinder Singh Oberoy (1997: 28) wrote: 'luxury hotels have been turned into barracks; gun toting Indian soldiers in battle gear man sandbagged bunkers at nearly all major road intersections and important installations; most of the government-owned eateries that once dotted the countryside have been torched'. Perhaps the most impinging on people's psyche symbol of encroachment into the public space is Hari Parbat, a hill overlooking Srinagar, known from Durrani fortifications built by Afghan governor and a site of a Hindu temple, Sufi shrine and Sikh gurdwara. Holy to the representatives of all religions, it is occupied by the Indian army since the 1990s. In 2000, Jean Dreze, while cycling across the Valley, noted that the security forces are rarely out of sight—even in remote villages—and added that the local population complained about being occupied.[55] The massive presence of the armed forces has major impact on everyday lives of common Kashmiris; it implies an occupation of territory and space, manifested by regular restrictions of movement for the sake of 'national security', with the armed forces enjoying priority over civilian movement. For example, in April 2019, the crucial Jammu-Srinagar highway was closed to provide safe convoy movement of security forces in the aftermath of 14 February 2019 Pulwama attack (42 CRPF personnel were killed in a suicide attack by Pakistan-based extremist group, JeM, the worst such attack against armed forces in Kashmir since the inception of insurgency). The attack gravely escalated Indo-Pakistani tensions and adversely affected local trade. Dozens of trucks were stranded, the traders faced major losses and local political leaders accused the central authorities of providing collective punishment for Kashmiris (Mehbooba Mufti) and of failing to manage the

internal security of J&K and bolstering anti-Kashmiri campaign in India (Omar Abdullah).[56] Some political opposition leaders, such as West Bengali Mamata Banerjee, blamed the Narendra Modi government for politicising the attack by using it in his election campaign and at the same time not doing enough to prevent such terrorist assaults.

Pakistan's support for Kashmiri insurgents and *jihādists* to pursue its territorial revisionist goals is systematically used by the Indian pro-government media to show biased, generalised portrayals of Kashmiri Muslims and Muslims in general, as India's enemies. Politicising Pulwama was, therefore, nothing new. Public opinion rather supports the BJP's policies vis-à-vis Kashmir, even if it is pertinent to gross HR violations, excessive militarisation, and generally adheres to a more iron-fisted policy. According to a Pew Research Center poll published in November 2017, the adoption of more forceful measures in J&K by the government had an overwhelming approval: 63% respondents wanted more violence, 11% opted for a mere continuation of current strategies, 8% demanded less violence, and only 16% didn't want the use of force at all.[57] The BJP had a sweeping victory in 2019 elections, which gave the second term to Modi; his government was aware of the prevalent support for its Kashmir strategy, and it correctly assumed that apart from the activists, intellectuals, and few opposition members, who had already displayed concern about the HR situation in Kashmir, the bifurcation of the erstwhile state would not garner massive opposition in Indian society.

In 2005 Kaz de Jong *et al.* (2008) from Médecins Sans Frontières conducted 510 interviews in two districts of the Valley (from 4 June 2005 to 16 August 2005 in Badgam and from 4 July 2005 to 18 August 2005 in Kupwara, altogether 30 villages) to investigate the impact of violence on mental state status of the Kashmiri population. The research exposed 'a pervasive climate of violence'; respondents admitted being subjected to trauma-inflicting experiences since the start of conflict, including 'exposure to crossfire (85.7%), round up raids (82.7%), the witnessing of torture (66.9%), rape (13.3%), and self-experience of forced labour (33.7%), arrests/kidnapping (16.9%), torture (12.9%), and sexual violence (11.6%)'. Men, more engaged in outdoor activities, reported significantly more confrontations with violence with higher likelihood of being subjected to physical/mental maltreatment, injury or detention. The militancy significantly triggered the prevalence of violence which affected the overwhelming majority of the Valley inhabitants. The respondents pointed out that the frequency of exposure to violence on multiple occasions increased 5 times since the beginning of the uprising in 1989. The militancy and oppressive legislation authorising counter-insurgency operations which are often at odds with international and Indian law, created a vicious circle of fear, trauma, deprivation and lawlessness.

Popular protests in the Valley escalated in the second decade of the 21st century, and they were followed by a rising number of fatalities. The analysts of the South Asia Terrorism Portal highlight the geographical spread of the number of fatalities. At the *tehsil*[58] level, fatalities were reported in

40 out of 82 tehsils in 2018 and 32 tehsils in 2017. At the district level, out of a total 22 districts, there were 16 districts with fatalities in 2018 and 15 districts in 2017, 12 districts in 2016, 14 in 2015, 13 in 2014, 14 in 2013 and 13 in 2012. The districts with the highest militancy activity and stone throwing were Srinagar, Baramulla, Kupwara and Pulwama; these districts plus Shopian and Kulgam were at the same time the worst affected by fatalities.[59] The Indian response to Kashmiri protests—no matter if they are peaceful or violent—has introduced more state violence. The security apparatus acts with impunity and shows contempt for people's lives; the examples of abuses are numerous. The report *My World is Dark* published by the APDP in October 2019 says that 'the presence of the armed forces and the special laws have spawned a culture of impunity. While HR violations by Indian security forces have been rampant over the last two decades, there has been no accountability for the same'.[60] General Bipin Rawat, the then Chief of the Army Staff, emphasised 'innovative ways' of mounting counter-insurgency operations in Kashmir, while awarding one of his majors, Leetul Gogoi, for attaching a Kashmiri man to an army jeep as a human shield from stone throwers (in June 2018). Rawat argued that the Indian army is a 'peaceful army' but at the same time he added that he would prefer if the protesters used guns rather than stones. 'Then I could do what I (want to do)'. It clearly indicated that the Indian Army chief commanding authority would be willing to engage in exchanges of fire if only protesters gave him the excuse to do so.[61]

Referring to the narrative that Kashmiris support anti-Indian terrorism and Islamic extremism, General Rawat warned the local population that those who shelter 'terrorists' will be treated as anti-national and face grave consequences. The armed forces are officially glorified for their actions and presented as the guardians of security, very often in an elevated, emotional way, which resembles Pakistan's approach. The generals and Prime Minister Narendra Modi pay their last respects to the soldiers killed in the encounters. 'We are here to protect you' inform huge banners at the entrances to the CRPF in Srinagar's Boulevard Road at the Dal Lake, one of the most scenic parts of the city. The patriotic salutation *Jay Hind* (Victory to India)[62] which appears on banners emphasises the unity of India as Hindustan, symbolically combining patriotism with Hinduism as the sole representative of India's identity. Such banners on military compounds in Srinagar and elsewhere accentuate the government's approach and stir up the already tense atmosphere.

The state-promoted idolisation of the armed forces is contradicted by realities on the ground, when civilians are treated in condescending and humiliating ways by the soldiers. Local HR organisations provide plenty of thoroughly documented examples of such behaviour. For example, in July 2011, the Office of the Superintendent of Police in Srinagar informed the State Human Rights Commission in the Government of Jammu and Kashmir that a complainant (lodged by S. A. Rasheed) alleged that with other people from neighbouring villages he had been subjected to forced labour and humiliating, inhuman treatment at the hand of the 33 Rashtriya

Rifles (National Rifles, counter-insurgency formations, drawn from regular army, consisting of soldiers from all over India, created to fight guerrillas[63]) stationed at Qalamabad, Mawer, Kupwara district. The petition argued that the 'army unit in question used civilians as human shields and utilized their services in construction of bunkers, extraction of illegal timber[64], night patrolling, etc., without compensation'. The document corroborates the accusations and admits that 'the number of days in which people have been subjected to forced labour without compensation runs into thousands'. The soldiers put the lives of civilians at risk by forcing them 'to search for explosive material while accompanying the road opening parties'.[65]

The families of victims are aware of the impunity of the armed forces and practically have no hope that the perpetrators of any violations will be held accountable. According to the Amnesty International (AI) report published in 2015, which referred to the accountability of security forces, 'all of the 58 families interviewed by AI said they had little or no faith that those responsible for HR violations will be brought to justice, given the lack of accountability for security forces in Jammu and Kashmir over the past two decades'.[66] The prevalence of militarisation is particularly observable in strategically located places and properties abandoned by the Pandits, which are presently occupied by the armed forces. The APDP in its 2019 report *Imprisoned Resistance* (IR 2019) cites the daily *Kashmir Life* from 5 October 2019: 'the CRPF since 2003 operate from a little over 100 small hotels and houses abandoned by Kashmiri Pandits'.[67] They are victims of the state apparatus and the Islamic militancy: a report published by the International Commission of Jurists in 1995 stated that a number of leading members of the Pandit community were killed by the militants and in the early months of 1990 their exodus began; it was estimated that up to 150,000 Pandits left the Valley and their properties. Many of them were placed in the refugee camps in Jammu to live in distressing conditions with a lack of sanitation, clean drinking water, etc.[68] Their departure made the restive region more religiously homogeneous and gave additional space to Pakistani-supported secessionists in their endeavour to Islamise the Kashmiri popular resistance. Some Kashmiri Muslims view the Pandit exodus as intentional policy of the state, which enabled the central authorities to blame the militants for ethnic cleansing and introduce iron-fisted policy in the Valley. In 2017, the BJP denied the allegations of plans to establish separate colonies for the Pandits in J&K. It was the right decision, as ghettoisation of the Valley is not the appropriate solution to the problem. More than a year after J&K's bifurcation, no Pandit repatriation programme was introduced.

In order to quell the insurgency, to control and intimidate the people and to act secretly by using proxies, the Indian army and paramilitary forces introduced rough counter-insurgency measures, which included recruiting former militants to act against Kashmiris. Local ex-militants (Ikhwānīs) were used to threaten, intimidate and inflict terror among the people. Ikhwānīs (*ikhwān* means 'brotherhood') were unofficial local mercenaries,

pro-India militants, renegades trained, armed, paid and supported by the Indian army, working in its shadow to intimidate popular resistance. Upon their surrender, the ex-militants were a valuable asset for the Indian army as they knew the hideouts of the active insurgents and were feared by the local population.[69] The renegades used the tactics which had regularly been introduced by the armed forces: search, detention, torture and execution—to blackmail people in order to receive money, sexual favours, vehicles, etc.[70]. Moreover, they were operating beyond any legal constraints by killing people, forcing Kashmiris to spy for the establishment, abducting and raping women. Shielded by the state, they acted extra-legally with complete impunity against the civilians and their property. David Devadas (2018: 120–121) argues that some Rashtriya Rifles or BSF commanders were vaguely informed about the activities of the mercenaries who cooperated with their units, but some officers worked with Ikhwānīs in order to receive some goods from local people. He gives an example of a BSF officer who accused a teenager of being a militant and tortured him with a gun only to get his new black car. Devadas cites the story of local people in Safapora who recall the public execution of a teenage who refused to give up his motorcycle: 'Waseem Jan, a fifteen-year-old schoolboy, rode a new RX 100 Yamaha motorcycle one morning in January 1996 to buy mutton. At the shop a bunch of Ikhwānī thugs demanded the bike. The boy asked why they were eyeing what was not theirs. For his gumption, people from the neighbourhood said, he received a burst of automatic gunfire in his chest'.

The counter-militancy operations of the armed forces are praised by numerous apologetic books written by the army officers who served in Kashmir, where the bravery and sacrifice of the troops is glorified and local people are blamed for helping Pakistani-sponsored militants. One such publication was authored by Lieutenant General Avinash Chander Soneja, who commanded military operations in the Valley during the peak of the militancy in the 1990s.[71] In another, Jaibans Singh, a retired Colonel of the Indian Army, argues: 'the most critical elements in the dynamics of the Jammu and Kashmir situation and also the *most maligned, misunderstood and misinterpreted* (italics—AK) are the security forces. The Armed Forces of the Nation have, since independence, been called upon to defend Kashmir with sweat and blood. They have performed their duty with utmost courage and fortitude and that is the prime reason for the freedom that the region enjoys today. Yet, there are many detractors who project the force in [a] negative light. There are some vested sponsored interests that wish to reduce the security umbrella so as to resurrect terrorism and insurgency'.[72] According to Singh, security in IaJK is threatened only by foreign sponsored terrorism, and people's suffering is caused solely by Pakistani interference.[73] The peaceful coexistence and 'complete harmony' between Muslims, Hindu Dogras and Sikhs is eulogised with the emphasis that it was foreign sponsored terrorism which introduced communal violence and rivalry, leading to the Kashmiri Pandits

exodus in the early 1990s.[74] The injustices perpetrated with impunity by men in uniforms and the failure of the Indian state to address multiple challenges in Kashmir are conveniently overlooked in such publications.

Notably, the soldiers deployed in Kashmir also fall victims to the state-led narrative. Articulating any complaint regarding the situation on the ground is perceived as a potential threat to the meticulously created picture of Indian troops' heroic struggle in Kashmir and good working conditions they have. In 2017, Tej Bahadur Yadav, a young soldier in the BSF who was deployed with the force's 29th battalion, alleged that troops were served bad quality food and even had to sleep hungry. This complaint in a camp near the Indo-Pakistani border prompted an inquiry which found him guilty of indiscipline and false accusations. Subsequently, he was dismissed by the Summary Security Force Court.[75] Soldiers who dare to complain are immediately discharged, while those who commit abuses enjoy impunity and are even rewarded. For example, Major Leetul Gogoi (deployed in Kashmir from Assam), who used a Kashmiri man as a human shield attached to an army vehicle while leading a convoy of election commission staff in Budgam in June 2018, was later commended for his 'distinguished service' by an Army chief, General Bipin Rawat.[76] The video showing a man tied to a jeep widely circulated in the Valley, sparking public anger and enhancing the perception of the Indian state as occupying, hostile force. Moreover, the image of a human shield was used in September 2018 by Pakistan in its anti-India campaign, in a series of 20 stamps, each showing different 'atrocities in Indian occupied Kashmir'. One of the other stamps showed Burhan Wani (*vide supra*, §3.2) and referred to him as a 'freedom icon'. All stamps had Urdu text on the left side that read *Kaśmīr banegā Pākistān* (Kashmir will belong to Pakistan), a doctrine with Islamic quest, which remains a core ideological framework for Pakistan's territorial revisionism.

3.4 The legal tools of impunity

The Indian anti-terrorism law has its multidimensional trajectory in the post-1947 history of India. Certain legal acts, such as the Preventive Detention Act, Maintenance of Internal Security Act (MISA), Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA), were introduced all over India then repelled, amended or replaced by other laws in order 'preserve national unity' and to suppress what is deemed as terrorist activity. In certain cases, various laws functioning in Kashmir provide legal shield for the state-supported policies that go beyond the struggle with actual terrorism-related threats. The Unlawful Activities (Prevention) Act (UAPA), 1967, is India's main anti-terrorism law, subjected to several amendments. Currently, an organisation and an individual can be pronounced 'terrorist' if they endanger India's sovereignty and integrity by 'taking part, committing, advocating, abetting, advising or inciting the commission of,

any unlawful activity'.[77] Anyone deemed capable of such activities can be arrested for six months without trial or bail. Apart from preventing real terrorist activities, the UAPA serves as authorisation of oppression, which raises concerns of HR defenders. Under the narrative of 'zero tolerance' to terrorism, the UAPA was amended in August 2019,[78] to include the provision of designating an individual as a terrorist. Charging individuals further empowers Modi administration to criminalise dissent, curb civil liberties, freedom of speech and selectively target people regarded 'anti-state'. On the one hand, supporting militancy remains a fragile issue in the Valley, on the other, broad definition and understanding of anti-state activities under the stringent UAPA paves the way to arbitrary decisions. In August 2020, a group of cricket players was arrested under the UAPA for organising a match commemorating the brother of one of the players, a killed militant. According to the police, they were encouraging people to glorify the armed rebellion; the critics accused the government of creating an atmosphere of subjugation.[79]

The exemption from punishment provided for those who bear responsibility for HR abuses is legitimised and remains affiliated within the framework of official political, economic, sociocultural and legal discourse, which claims that restoring 'public law and order' is the actual objective of the Indian state. In Kashmir, the law and legislation exempts the armed forces from prosecution and serves to provide wide-ranging power to the administration. In this regard, two acts are worth analysing: the Jammu and Kashmir Public Safety Act (JKPSA), 1978 (amended in 1987 and 1990) and the Armed Forces (Special Powers) Act (AFSPA) 1990. Referred by those who critically assess New Delhi's policies as 'legalised illegalities',[80] they provide a framework for legitimising oppressive, intimidating actions against civilians and safeguarding the systematic *de facto* impunity. Consequently, the state fails to persecute the perpetrators of violence for political reasons and acts as a shield for the abusers, and the systemic *de jure* impunity, when special laws and regulations are intentionally enacted to guarantee legal immunity to the state-supported actors.

The JKPSA enables controlling people and often provides collective punishment for the activities of the militants. According to this legislation, an individual can be taken into preventive custody for two years without any charges or trial. In accordance with Section 8 and 18, the JKPSA enables the armed forces to detain anyone 'acting in a manner prejudicial to maintenance of public order' for up to one year and a person who is considered to be acting 'prejudicial to the security of the State' can be arrested for 2 years. The conditions for arrest are enumerated in Section 8, for example: '(i) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community or region (ii) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region; (iii) making preparations for using, or attempting its

use, or using, or instigating, inciting, or otherwise abetting the use of force where such preparation, using, attempting, instigating, inciting, provoking or abetting, disturbs or is likely to disturb public order (…)'.[81]

In practice, everyone who is regarded as acting against the interests of the state can be arrested. Sanjay Kak (2014: 45) argues that between 2008 and 2010 nearly 1000 Kashmiris were detained under the JKPSA.'To simply be associated with a separatist group—even an "overground" one—allowed the police to detain you for upwards of six months …. To satisfy an arrest under the PSA, the police only needed a district magistrate to sign off on a one-page "order". This allowed people to be detained for up to two years, without legal recourse'.

Activists who chronicle HR violations are under permanent invigilation and their freedom of movement is regularly restricted while the state undertakes cohesive and punitive actions in order to intimidate them. A noteworthy example of using the JKPSA, which received relatively wide international coverage,[82] was the arbitrary detention of Khurram Parvez, a prominent Srinagar-based HR activist, the member of Asian Federation Against Involuntary Disappearances (AFAD) and JKCCS (Jammu Kashmir Coalition of Civil Society) Program Coordinator. Arrested in September 2016, he was on the way to Geneva to deliver a speech in the forum of the Human Rights Commission. He was declared a threat to public safety under the AFSPA and imprisoned in Kot Bhalwal Jail in Jammu, around 300 km from Srinagar under Sections 107 and 151 of the Criminal Procedure Code (detention for breach of the peace and design to commit a cognisable offence). To make things more dreadful, Khurram Parvez is himself a victim of the conflict in Kashmir: his leg had to be amputated following a tragic accident when an improvised explosive device, IED, blew up their car during monitoring elections in Kupwara on 20 April 2004. Aasia Jeelani, young HR activist and journalist, who had 2 years earlier launched with her friends the Kashmiri Women's Initiative for Peace and Disarmament (KWIPD), lost her life in that incident along with their cab's driver, Ghulam Nabi. According to the activists who survived the tragedy, the Indian army and some locals who saw the injured did not provide sufficient, immediate help. Since the accident Parvez has been involved in the campaign against landmines and other explosive hazards.

The determination of the Indian establishment to restrict Parvez's freedom of speech and preventing him from presenting the situation in the Valley on an international level raised profound concerns and undermined the projected image of India as a democratic state. Khurram Pervez was kept in police custody and then in jail (Kothi Bagh police station, Srinagar and Kupwara sub-jail, the latter being 100 km from Srinagar, which not only made his situation difficult due to his being physically challenged, but also restricted his contacts with family, the media, his access to legal counsel, etc.). Notably, in 2018, the situation deteriorated for arrested persons: the legislation was amended to remove a proviso which barred detainees who are permanent residents of Jammu and Kashmir from being incarcerated outside the state.[83] Upon his release

from prison after 76 days without trial, when the Jammu and Kashmir High Court declared his detention illegal, Khurram Parvez argued in an interview: 'probably, one of the reasons why people are being booked under the JKPSA, including me, is that they want to scare others'.[84]

In 2019, the prevalence of draconian JKPSA was termed by AI's report as the 'tyranny of lawless law', under which those arrested without charge or trial do not enjoy the rights which are guaranteed under Indian and international law.[85] The data regarding the age of arrested people are allegedly purposely changed to hide the fact that they are underage. Consequently, the state, which should be a guarantor and guardian of human rights, acts and is perceived by the Kashmiri Muslims as the enemy of its own citizens, where law does not equal justice. International non-governmental organisations also point out that even teenagers are victims of arrests under the draconian legislature. For example, a 14-year old Faizan Rafiq Hakeem was released from prison in 2011 after his case was covered by the AI. The organisation had published a report referring to the JKPSA as 'a Lawless Law',[86] which is used to quell any dissent of Kashmiris and to perpetuate structural violence with impunity. In another case, Mohammad Ibrahim Dar who was 14 when he was detained under this law in May 2017, but his age was noted as 22. The High Court rejected the order in October 2017, after examining his school certificate.[87] According to the AI, the detentions were ordered on the basis of vague and generic allegations, which prevent detainees from effectively challenging them'. Some of them followed similar pattern: certain proofs showing connections with Pakistan or Pakistani-supported Islamist groups were found in the possession of the alleged terrorists. For instance, letters signed by the armed groups (such as HuM or LeT) were allegedly found in the pockets of arrested people.[88]

The AFSPA legislation is a derivative of the Armed Forces Special Powers Ordinance of 1942, which was adopted by the British on 15 August 1942 to quell the Quit India Movement. In independent India, the Armed Forces Special Powers Act was enacted and enforced in the hill areas of Manipur and Nagaland (then part of Assam state) in the 1950s.[89] The AFSPA enacted in 1990 in Kashmir further reduces the facade of a possibility of redress[90] and cannot be subject to judicial review.[91] The act refers to 'disturbed areas' and gives special powers to the armed forces operating there. Once the area is announced disturbed by the Governor or Central Government (it is declared by a notification in a special *Gazette*), it becomes subject to the provisions of the act. 'Disturbed' includes what the authorities perceive as anti-government acts, terrorist acts, activities aimed to disrupt or question the territorial integrity of India, etc. In 1990, only six districts of the Valley plus two districts of Jammu—Rajouri and Poonch—were acknowledged as disturbed areas, in 2001 the government informed that the whole state (with exclusion of Kargil and Leh) was considered 'disturbed' under Section 3 of the AFSPA.[92] Section 4 stipulates that any commissioned or non-commissioned officer or any other person of the armed forces may fire upon

or use force against anyone he considers dangerous to public order, even if it results with death of that person. Such officer is also authorised to destroy any premises, public or private, from which armed attacks are orchestrated or are likely to be made, so this is a subjective, sometimes taken in haste, judgment of the decision maker. The armed forces are legally granted extensive executive powers to kill, arrest people and detain them without a warrant; the AFSPA was termed a 'draconian law' also because it allows in Section 4 (c, d) the arrest of any person without warrant, and the entry and search, without warrant, of any premises to make any such arrest. It violates international law promulgated in Article 9 (2) of the UN International Covenant on Civil and Political Rights, which states that 'anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him'.[93] Section 7 of the AFSPA provides protection of persons acting in good faith under this Act.— 'No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act'.[94] The perpetrators are, therefore, granted legal protective shield for any action done within this legislation. In other words, the armed forces deployed in IaJK enjoy *de jure* impunity from prosecution by this Act, which enables them to violate human rights, including inhumane treatment and torture of the detained persons (accompanied sometimes by the Islamophobic violence, when for example some detainees are forced to shout '*Jai Shri Ram*'—Hail Lord Ram) and uncompromising dealing with protesters. The Central Government, which has legal tools to prosecute the army officers, does not take such decision with regard to the armed forces deployed in Kashmir, typically claiming lack of evidence.[95] It often contradicts the facts, as many abuses are very well documented by the local and international NGO's, with detailed witnesses' statements.

The Indian security establishment fiercely defends the necessity of upholding the draconian legislation. According to Col. Jaibans Singh (2014: 224–226), the militants curb peoples' freedoms and the army protects the dignity of the inhabitants. Consequently, the AFSPA is politically and legally justifiable and essential for the armed forces 'to function proactively in counter-terrorism and counter-insurgency situations'. But preventive detention under the AFSPA and the rule of law are usually seen as mutually exclusive opposites.[96] The only way to legally challenge the administrative preventive detention order is filing a *habeas corpus* petition (*habeas corpus* is a writ that requires a person under arrest to be brought before judge or into court[97]) by relatives of the arrested person.[98] These petitions are often pending endlessly, depriving the family members of the chance to meet their incarcerated relatives. The aforementioned detailed report *Imprisoned Resistance* (IR Report) highlighted the grave situation of many detained people: 'prior to August 5, 2019 there were approximately 200 *habeas corpus* petitions pending, now there are more than 600. From August 5, 2019 more than

330 such petitions had been filed till September 30, 2019. There are countless detentions that are unlawful, hence, no one except the State knows how many persons are illegally detained. The people said there are reports that more than 13,000 people have been unlawfully detained. In many instances the draconian JKPSA is slapped arbitrarily on people. Many detainees are being transferred outside of J&K, which, the lawyers said, was intentionally done in order to prevent family members and lawyers (…) from having access to them'.[99] The authors, who managed to meet local lawyers, exposed how much the local judicial system was deprived of its independence: 'the consensus among the advocates we met is that the independence of *the judiciary is compromised when it comes to any matter relating to the armed forces* (italics—AK) and this has left them disillusioned with the judiciary. Thus, the lack of any urgency in either the *habeas corpus* matters in the High Court or the blockade and restrictions matters in the Supreme Court, comes as no surprise to them'.[100]

One lawyer was quoted: 'even under so-called normal circumstances judges cannot function independently due to pressure from the agencies. People fear legal action and only 3–4% of the victims go to court. There are 8 lakh (800,000—AK) military deployed in Kashmir and hence the army presence is always looming. The phones of all the lawyers are tapped. All institutions are infiltrated by the Intelligence Bureau. The centre decides who should be released under JKPSA and then judges do what they tell them to. Most of the trials end in acquittals. Judges delay cases, transfer undertrials to different districts, who are then not produced due to lack of escorts. 5th August has created an extraordinary situation, and the courts are not passing any orders against the government even in blatantly illegal arrests and detentions of even minors'. Another lawyer added: 'there is anarchy and the judiciary has been made non-functional. PSA is misused and there are thousands of stone pelting cases. They can arrest anyone when they chose to do so. This is sinister violence of the armed forces and in JKPSA cases the Deputy Commissioners act like rubber stamps as does the judiciary. So many Commissions are appointed but nothing changes, nothing concrete happens. Harsh laws have to be removed. The national media has tarnished our image and our children outside are being harassed. There is impunity and the orders are not respected'.[101]

In 2015, a senior BJP leader and Minister of State in the Prime Minister's Office, Jitendra Singh, declared that the final decision regarding the AFSPA should be taken only by the security experts and agencies and not by political decision makers.[102] It was a disturbing statement for a civilian decision maker of a country which, at least in theory, is governed by democratically elected representatives, not ruled by the military establishment (which India often highlights while referring to the all-powerful 'deep state'–represented by the military top brass, the ISI, etc.–in Pakistan). Contrary to the officially promoted image of Indian democracy, there are close relations between the army and politics, with ex-generals playing crucial role.

Following the splitting of Jammu and Kashmir in 2019, the JKPSA and AFSPA were maintained as the legal shield for the armed forces' might and the anti-terror UAPA was excessively invoked against the protestors, accused of advocating or participating in ambiguously defined 'unlawful activities'. The Ministry of Home Affairs (MHA) with its Department of Jammu, Kashmir and Ladakh Affairs, retained the authority to impose the AFSPA in both UT's of Jammu and Kashmir and Ladakh, including all counterterrorism operations, and to control the situation along the LoC.[103]

Notes

1. van der Veer (1994: 1–2).
2. The presence of the RSS trusted politicians in Modi's administration, often on key positions with major socio-cultural influence, rose gradually, in particular, as a result of government reorganisations in 2016 and 2017. For example, Prakash Keshav Javadekar was nominated as the Minister of Human Resources Development (in 2020 the name of the ministry was changed into Ministry of Education).
3. Ubbott (2010: 353).
4. Agraval (2019).
5. Srivastava (2019).
6. Dwivedi–Mohan–Reghu (2020).
7. They are viewed as Muslims in the Hindu-majority Jammu and at the same time experience ethnic marginalisation in the Valley. Sharma (2020).
8. On non-migrant Kashmiri Pandits/Hindus, *vide infra*, §6.
9. Kaul (2018: 132).
10. Arundhati Roy (2011a: 57–58) once wrote: 'for all these years, the Indian state, known amongst the knowing as the Deep State, had done everything it could to subvert, supress, represent, misrepresent, discredit, interpret, intimidate, purchase and simply snuff out the voice of the Kashmiri people. It had used money (lots of it), violence (lots of it), disinformation, propaganda, torture, elaborate networks of collaborators and informers, terror, imprisonment, blackmail and rigged elections to subdue what democrats would call the will of the people'.
11. Their assassinations are mentioned in the outstanding, Anand Patwardhan's 4-hour documentary, *Vivek* (Reason; 2018) about the root and development of Hindu extremism and socio-political supremacism. It discusses the killings of other rationalists in India: Govind Pansare (2015) and Malleshappa Madivalappa Kalburgi (2015). Patwardhan described India in pre-2019 election time as a 'nascent fascist state'. Democracy Now! (2019).
12. Menon (2013: 166).
13. Chitralekha Zutshi (2014: 299) recounts the textbook controversy, which the BJP government had already stirred up in the late 1990s, by making an attempt to rewrite school textbook in accordance with Hindutva ideology.
14. HRW (2019a), NPR (2019).
15. It is estimated that middle class in India shrunk by 32 million in 2020 due to pandemic-related recession. According to Pew Research Centre, poverty rate in India rose to 9.7% in 2020, up from the January 2020 forecast of 4.3%. Kochhar (2021). Impoverishment may bolster susceptibility to radicalised, communal narratives.
16. V-Dem (2020: 12–17).

17. V-Dem (2021: 11, 20–21).
18. WPFI (2020).
19. Devlin (2019: 7). Markedly, although communal violence has escalated since 2014, only 34% of Indians see it as a very big problem; 54% are satisfied with the way India's democracy is working.
20. AI (2019b).
21. U.S. Department of State (2018b).
22. Kuszewska (2017: 102).
23. Anand (2005: 212).
24. Varshney (2002: 294).
25. Choudhury–Dhawan (2019).
26. Kumar–Chari (2019).
27. Baba (2011: 16–18).
28. There are exceptions in the independent cinematography, such as Sanjay Kak's documentary *Jashn-e-Azadi: How We Celebrate Freedom,* from 2007, presenting the militancy in an unbiased way. See: Chakravarty (2016).
29. It was founded by Gyalwang Drukpa, the leader of the Drukpa lineage, a religious affiliation of the majority of Ladakhi Buddhists. Yet, the tourists were mostly interested to see the "Rancho's School", named after the main character of the movie. Vasan (2021: 233).
30. IT (2019-08-07).
31. Delaney–Bhattacharya (2019).
32. Article 2 of the Citizenship Amendment Act (CAA 2019), which amended the Citizenship Act 1955, gives eligibility for Indian citizenship to the migrants from Afghanistan, Bangladesh and Pakistan of different faiths, including Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who face religious persecution in their countries and entered India on or before 31 December 2014. The bill does not include Muslims and was widely criticised in India and abroad for being unconstitutional.
33. Pathak (2019).
34. Wani (2019: 1, 10).
35. More on the history of Kashmiri insurgency: Balcerowicz–Kuszewska (2022a, Part 1, 3).
36. JKCCS (2017c: 94, footnote 132).
37. More on Pakistan's ideologically motivated revisionism vis-à-vis IaJK, see: Balcerowicz–Kuszewska (2022a).
38. Bose (2003: 98).
39. Kak (2014: 50).
40. Peer (2010: 28–30).
41. Zeenews (2013-06-22).
42. Devadas (2018: 79).
43. Mehta (2016).
44. The first *hartal* in 1989 was called for on 26.01, when India celebrated its Republic Day. Victoria SCHOFIELD (2003: 143) highlights that it was the first of many strikes which took up one-third of working days that year. In the following years, many massacres of protesters happened around that time of the year.
45. Chowdhary (2016: 197).
46. Devadas (2018: 11–12).
47. Devadas (2018: 82–84).
48. Bhan–Duschinski–Zia (2018: 9).
49. Peer (2010: 118–119).

50. Surrounded by apple orchards and prosperous due to its apple industry, it is called 'little London'. The attack was a heavy blow to its economy. With militant activities, Sopore is dubbed as militancy capital and was subjected to many massacres in the 1990s. Details on the 1993 massacre: Hussain (2019), JKCCS (2017c: 83–92).
51. McGirk (2011). Reportedly, five BSF personnel members were incarcerated for three months, the charges against others were dismissed. Hussain (2019).
52. HRW (2006a: 45).
53. HRW (2006a: 45–46).
54. Oberoy (1997: 27–28).
55. Dreze cited by Noorani (2013: 290). See also: Dreze (2000).
56. Countdown (2019-02-18).
57. Stokes–Manevich–Chwe (2017: 27).
58. An administrative subdivision of a district.
59. SATP (2019).
60. APDP (2019a).
61. ET (2018-07-14).
62. An alternative with no religious undertones would be: *Jay Bhārat* with the same meaning ('Victory to India'), but with a different connotation.
63. Bose (2003: 134).
64. In IaJK, deforestation and timber-smuggling remains an unresolved problem and, according to the Amsterdam-based European Foundation for South Asian Studies, law enforcement agencies, similarly to Pakistan, are unable, and unwilling, to effectively deal with smugglers, as they themselves profit from this corrupt system. Moreover, the army constructs installations across the rivers and military camps scattered across the valley pollute them. This enhances the sense of insecurity and dispossession among the locals who are not represented in world forums. They are excluded from managing their own resources and the pristine nature is destroyed by what they perceive as exploitation in the colonial manner. The rivalry on the Siachen Glacier, referred to as a war on top of the world, has turned it into a giant garbage dump. According to the EFSAS, 'since 1984, the year of militarization of the Siachen, about 216,000 tons of load has been transported, 40% of which [is] non-biodegradable waste' EFSAS (2019). In general, the environmental costs of the protracted conflict for ecologically fragile former PSJ&K are serious and at the same time largely undocumented. Their current and projected impact on the quality of life and preservation of Kashmir's natural resources and biodiversity requires a constant monitoring and a separate analysis focusing on the correlation between heavy militarisation along the LoC and LAC and the misuse of natural resources.
65. APDP&JKCCS (2019a: 517, annexure 3).
66. AI (2015: 34).
67. IR (2019: 30).
68. ICJ (1995: 30, 74).
69. Mathur (2016: 76), Hakeem (2014: 134).
70. Devadas (2018: 120).
71. Soneja (2015: x, 2, 38–39). See also a book by Sunjata Kanungo, a New Delhi-based teacher, who published for the Centre for Land Warfare Studies (CLAWS), a think tank, affiliated with the Indian army. She argues that Rashtriya Rifles operate with 'iron fist and velvet glove'; she claims that the troops are 'sensitized by their leadership on the principles of HR and all level care is taken not to violate them. Respecting the culture, tradition and religion are standards to be maintained by men at all costs'. Kanungo (2012: 73–74).

72. Singh (2014: xiv).
73. See also: Bhandari (2006: 107–135). The author, a retired Lt General of the Indian Army, offers the ways to 'resolve' Kashmir conflict, from the perspective of the Indian and Pakistani establishments. He blames Pakistan for terrorism, 'ethnic cleansing' of the Hindus, poor economic situation in IaJK and vehemently opposes the independence of Kashmir.
74. Singh (2014: 9).
75. Ahuja (2017).
76. Pubby (2018).
77. UAPA (1967), §13.
78. UAPA (2019).
79. Inzamam–Haziq (2020).
80. See Professor Hameeda Nayeem (2018) from Kashmir University discussing in July 2018 at Aligarh Muslim University (Uttar Pradesh) the weaknesses of Kashmiri state governments, results of militarisation and armed forces impunity in IaJK.
81. JKPSA (1978).
82. See: AI (2019a: 4).
83. JKPSAA (2018: 1–2).
84. Mohammad (2016).
85. AI (2019a: 5, 7). Reports describing this legislature as lawless law had already been published by AI in 2011 and 2012.
86. AI (2011).
87. AI (2019a: 10).
88. AI (2019a: 18–19).
89. Kimura (2019: 147).
90. Lone (2018: 385).
91. Kazi (2018: 157–158).
92. IR (2019: 86).
93. ICCPR.
94. AFSPA, IR (2019: 86).
95. IR (2019: 86).
96. Kumar (2016: 180).
97. Kalra (2014: 184, footnote 481), Awasthi (2012: 338).
98. APDP (2019b: 15).
99. IR (2019: 7).
100. IR (2019: 25).
101. IR (2019: 25).
102. Ganal (2015).
103. ET (2019-11-05).

4 Documentation of the human rights abuses

Agnieszka Kuszewska

Human rights violations in Indian-administered Jammu and Kashmir (IaJK), particularly in the Valley,[1] are much more frequently and exhaustively reported and documented than those on the Pakistani side. The local non-governmental organisations have more space for their activities and although their members are regularly arrested and persistently subjected to state-imposed restrictions and intimidation, they produce regular reports and brief comments on the HR situation. The killings, tortures, enforced disappearances, abductions, arbitrary arrests, using pellet guns against protesters and unarmed civilians and other forms of deprivation and persecution are chronicled with details, based on the accounts of the witnesses, victims' relatives, etc. The international NGOs also regularly publish reports referring to different patterns of human rights violations in IaJK. It evokes staunch reactions in New Delhi, which regards Kashmir-related problems as its internal issue. The exemplification and analysis of selected documents issued by the governmental and non-governmental organisations before IaJK's bifurcation, followed by the illustration of various cases and methods of HR violations and the post-2019 abuses, depicted in the next chapters, enable us to demonstrate their scale and dynamics.

4.1 International reports on human rights violations

The prominent international NGOs such as the Amnesty International and Human Rights Watch regularly publish the reports on HR abuses in IaJK.[2] Such accounts are met with criticism by Indian authorities and regarded as sufficient evidence of the experts' biased approach or misinformation. The government reacts by targeting NGOs and curbing their activities. Notably, in September 2020 the Ministry of Home Affairs declared that AI's statements were 'unfortunate, exaggerated and far from truth' and 'HR cannot be an excuse for defying the law of the land'.[3] Following the AI's recurrent critical exposure of HR violations in Kashmir and inciting anti-Muslim violence by the Hindu nationalist BJP government, the organisation was accused of illegal interference in domestic political debates as foreign-funded entity[4] (the bank accounts were frozen) and forced to cease its operations in India.[5]

DOI: 10.4324/9781003196525-5

Rejecting unflattering remarks concerning the policies vis-à-vis IaJK has become a common feature of Indian governments, especially following the inception of the insurgency in the Valley. This is a political strategy which India shares with Pakistan: exclusively approving the state-imposed narratives regarding the chunks of Kashmir administered respectively by both rivals as absolutely unquestionable. For example, a mission of the International Commission of Jurists (ICJ) visited Indian- and Pakistani-controlled sections of Jammu and Kashmir, from 16 to 30 August 1993. The report was published two years later as 'the preliminary draft of the report had to be sent to the Governments of India and Pakistan for their comments'.[6] Both governments issued replies and comments, and the ICJ noted with regret that the then Indian Congress Party administration (of P.V. Narasimha Rao) interpreted critical remarks as a proof of bias on the part of the members of the mission. Pakistan Peoples Party government of Benazir Bhutto also accused the mission of a lack of objectivity.[7]

The members of the ICJ mission were the first representatives of any international HR organisation to be given permission to visit Kashmir since the start of the insurgency. In IaJK, they spent only 2 days in Srinagar and 2 days in Jammu; the research in the Valley was rigorously constrained by the Indian authorities.[8] The report highlighted decisive role of the security establishment and informed about highly restricted access to on-the-spot information, contrary to previous assurances: 'The ICJ mission had been assured in Delhi that it would be allowed to hold meetings in a hotel in central Srinagar, to which anyone who wished to meet the mission would have access. However, this assurance was overruled by Lt. Gen. Zaki, the Governor's security adviser in Srinagar, who also refused to allow the members to accept an invitation to visit the Bar Association's offices in the Court precinct. As a result, the ICJ mission had to hold its meetings in a State guest house in a military cantonment outside Srinagar'. Markedly, at the same time the authorities keenly enabled the Mission to meet the Pandits as there were no restrictions in Jammu, where 'the ICJ mission met representatives of local organisations and visited refugee camps occupied by Kashmiri Pandits (Hindus) who had fled from Kashmir'.[9]

Apart from providing the historical background of the conflict, the report emphasised that multidimensional misconduct and HR abuses damaged India's international reputation. The ICJ mission highlighted the necessity to train the armed personnel in the matter of human rights issues and to establish an independent HR commission which would have unrestricted access to Kashmir. It called both the Indian authorities and the militant groups to abide by international HR standards and humanitarian law and referred to draconian laws by pointing out that 'the Indian Government should amend its security-related laws to guarantee the standards voiced by international instruments, including the presumption of innocence, access to independent and effective courts, due process of law, and sanctions against violators of human rights'. The perpetrators were called 'to

end extra-judicial killings, torture and other malpractices which are pervasive in Jammu and Kashmir'.[10]

In the early 1990s, during the peak of insurgency, the Kashmir Valley was officially blocked from any thorough, independent international on-the-spot examination for a decade. Nonetheless, the ICJ report argued that the representatives of international HR organisations, such as Asia Watch (division of HRW) had visited Kashmir clandestinely by posing as tourists and that local organisations were active. A formally authorised visit took place between 2004 and 2006, when the HRW carried out significant research: it was the second time since the anti-Indian insurgency began that an international organisation was permitted by the Indian government to conduct an investigation in the Valley. The 156-page report published thereafter documented the abuses perpetrated by the Indian army and paramilitary forces, as well as by the militants, many of whom were backed by Pakistan. It stressed the widespread character of the abuses committed by multiple perpetrators: 'Kashmiris are trapped in an armed conflict between abusive Indian government forces and armed militant groups waging a brutal separatist struggle with the backing of the Pakistani government'.[11]

Since then many other accounts of the abuses and statements of the international representatives highlighting Kashmir as major global flashpoint have come to light. In June 2018, a landmark first-ever report issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on Kashmir called for international inquiry into multiple violations on both sides of the Line of Control (LoC). Notably, it referred to the abuses committed both in IaJK and PaJK,[12] thus confronting the official narrative of Pakistan that the violations occur only on Indian side. It detailed the problems of chronic impunity of the perpetrators and provided 17 recommendations to India and 7 to Pakistan (remarkably failing to make any recommendations on dismantling terror groups' activities and their infrastructure) and to the UN Human Rights Council. The HRC was asked to consider the establishment of a commission of inquiry to conduct a comprehensive independent international investigation into allegations of HR violations in Kashmir. 'There is an urgent need to address HR violations and abuses and to deliver justice for all people, who have suffered a conflict that has claimed or ruined numerous lives for seven decades'. The report highlighted the Armed Forces Special Powers Act (AFSPA) and Jammu and Kashmir Public Safety Act (JKPSA) as legal instruments which impede accountability: 'in the nearly 28 years that the law has been in force in Jammu and Kashmir there has not been a single prosecution of armed forces personnel granted by the central government'.[13] The UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein wrote that Kashmir dispute 'has robbed millions of their basic human rights, and continues to this day to inflict untold suffering'.[14]

The report highlighted a wide range of serious abuses in IaJK, called for independent international enquiry into violations[15] and was a major

embarrassment to the Indian federal government and to the then JKPDP-[16] BJP coalition government in Jammu and Kashmir. It reached global audience and raised international concerns about human rights situation in the region. Diverse patterns of abuses were exposed and Kashmiris were recognised as legitimate side of the dispute. Indian armed forces were accused of using the excessive force against civilian protesters, carrying out collective punishment of civilians in the form of Cordon and Search Operations (CSOs), known from the early 1990s and reintroduced in 2017, sexually abusing women and using pellet-firing shotguns described as 'one of the most dangerous weapons'. As predicted, the Indian authorities vehemently denigrated the report, which they viewed 'fallacious, tendentious and motivated', with a 'selective compilation of largely unverified statements'. The Ministry of External Affairs argued that the report 'violates India's sovereignty and territorial integrity'.[17] The entire state of Jammu and Kashmir was assumed as an integral part of India, which corresponded with New Delhi's long-term stance on the conflict. Pakistan was called to 'vacate the occupied territories' and accused of 'illegal and forcible occupation of a part of the Indian state through aggression'. The 'incorrect description of Indian territory' was assessed as 'mischievous, misleading and unacceptable. There are no entities such as "Azad Jammu and Kashmir" and "Gilgit-Baltistan"'.[18]

The 2018 annual report on HR practices in India published by the US Department of State referred to the OHCHR account. It corroborated the killings by government and by non-governmental forces, including organised insurgents and terrorists and reiterated the accusations of persistent lack of accountability for misconduct at all levels of government, contributing to prevalent impunity. 'Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contributed to a small number of convictions'.[19] The report highlighted the use of pellet guns, cases of torture, limited access to prisoners, arbitrary arrests or detentions without a charge or trial under the JKPSA. It quoted the J&K state government, which reported that 'more than 1,000 prisoners were detained under the JKPSA between March 2016 and August 2017'. The Jammu and Kashmir High Court Bar Association stated that 'political prisoners made up one-half of all state detainees'.[20] On 9 July 2019, the OHCHR published the second report, an update of the situation in both parts of LoC. It highlighted the imposition of the Governor's rule in IaJK on 20 June 2018[21] and reiterated that the abuses continued unabated.[22]

Both OHCHR reports resonated extensively in the Valley.[23] The Kashmir Press quoted acclaimed HR activist Khurram Parvez who termed them a groundbreaking and symbolically crucial step leading to an acknowledgement of the Indian government's role in massive HR abuses.[24] On 15 February 2018, the Jammu Kashmir Peace Initiative Group addressed petition 'Stop shelling the residents across Line of Control in Jammu Kashmir'

to António Guterres, the UN Secretary. They demanded halting the continuous LoC shelling and urged that the United Nations Military Observer Group in India and Pakistan (UNMOGIP, responsible for observing the ceasefire violations) personnel should monitor the situation thoroughly and regularly. 'Millions of civilians across 750 km long Line of Control in the internationally disputed State of Jammu Kashmir have been living in equivocal situation since decades. … The residents across LoC are being unremittingly targeted by the forces of occupation in a recent cycle of violence since 13.08.2017. Dozens of civilians including women, elderly and children have lost their lives across LoC due to this shelling. Hundreds of civilians are injured, schools and roads are closed. Heavy weapons are killing innocent civilians every day and destroying homes and other public and private property, and civilians are being forced to flee on both sides of the LoC in Jammu Kashmir with no shelters, living as unrecognized IDP's in despondent circumstances. We, the residents across LoC urge you to call upon India and Pakistan to honour the ceasefire agreement along LoC in Jammu Kashmir, which both countries once agreed on January 1, 1949 at the United Nations Security Council (UNSC) and again bilaterally agreed to implement ceasefire in Jammu Kashmir in November 2003'.[25]

The protracted conflict, ubiquitous violence and sense of helplessness traumatise the civilians who experience perpetual stress and anxiety. Doctors without Borders (Médecins sans Frontières, MSF), an international medical humanitarian NGO, which provides support for people in distress, including the victims of armed conflicts, carried out research in Kashmir. It highlighted that 'years of conflict in Jammu and Kashmir have taken a toll on people's mental health in the state'. According to a survey conducted by MSF in 2015, 'nearly 1.8 million adults (45 per cent of the adult population) in the Kashmir Valley show symptoms of significant mental distress. This is compounded by the stigma associated with mental illness'.[26] In 2017, the MSF, in collaboration with a local association, conducted psychoeducation sessions for groups of pellet gun victims. Similar sessions were also organised for schools across the Valley with the aim of educating the audience about the importance of mental health, signs and symptoms of mental disorders, various coping mechanisms that can help combat such conditions and the need to seek help from professional counsellors if need be. The MSF counsellors continued to provide free, high-quality counselling to those affected in the district hospitals in Baramulla, Srinagar, Bandipora, Pulwama; sub-district hospital in Sopore and SKIMS Soura in Srinagar. Up to 2019, they offered almost 4000 individual counselling sessions—60% of the attendees were women.

4.2 Local reports on human rights violations

Notwithstanding the state-imposed oppressive methods, it has to be emphasised that the documentation of human rights abuses in IaJK is incomparably

more detailed that in PaJK, where any socio-political and HR related activities are thoroughly scrutinised by the ISI-military establishment and curbed once assessed as 'anti-Pakistani'. The activists, lawyers, scholars, journalists, etc. in Indian-administered chunk of Kashmir are also subjected to multiple restrictions. Nonetheless, local non-governmental organisations in the Valley (such as Jammu Kashmir Coalition of Civil Society, JKCCS and the Association of Parents of Disappeared Persons, APDP) are able to investigate and launch the reports with detailed data regarding HR abuses. Since its establishment in 1994, the APDP has been relentlessly documenting enforced disappearances and holding regular sit-in protests in Srinagar, demanding the information about the fate of missing relatives, who were often the sole or major bread-winners. Some Kashmiri activists are internationally recognised for their efforts. Parveena Ahangar (the co-founder and chairwoman of APDP, known as 'iron lady of Kashmir', whose son was abducted by the Indian army in 1990; in 2019, she was featured on the BBC's list of top 100 inspiring women) and Parvez Imroz (advocate, defiant HR activist, founder and President of JKCCS, repeatedly targeted for his activities) were awarded in 2017 with the Rafto Memorial Prize, a HR award established in the memory of Norwegian activist, Thorolf Rafto. The prize is annually granted by the Bergen-based Rafto Foundation for Human Rights, founded in 1986.

The omnipresence of violations in the Valley keeps Kashmiri HR campaigners permanently busy gathering data, documenting incidents and updating information. Local NGOs, working on the ground, with trust among the local people, collect valuable and verified data. JKCCS is the most prominent non-profit federation of various local HR watchdogs. It was established in 2000 and currently has three major components: The APDP, the International Peoples' Tribunal on Human Rights and Justice in Kashmir (IPTK, established in 2008), Public Commission on Human Rights (PCHR, founded in 2002 by Parvez Imroz). The NGOs and civil society organisations have been completing materials and documentation on militarisation and HR violations, identifying the perpetrators for the last two decades. The detailed documentary work of JKCCS has a predecessor in the reports of the Institute of Kashmir Studies, Srinagar, established in 1992, which published very detailed and graphic 42 reports and publications between 1993 and 1999, most of them confiscated and destroyed by the Indian army.

The activists work in small, basically equipped offices, experience permanent lack of funding and are regularly subjected to multiple restrictions and state-authorised persecution, yet they put relentless efforts to assess the HR violations quantitatively and qualitatively. The reports provide systematic access to the data which can be utilised to study the broad HR situation in IaJK. The lengthy (550 pages) document published by APDP&JKCCS in February 2019, highlighted the plight of thousands of summarily detained, tortured and extrajudicially killed people. The report, which aimed to draw

the attention of international community to cruel and degrading treatment or punishment, was a detailed examination of 432 case studies of structured and institutionalised use of torture. It claimed that 'in Kashmir torture has been used by Indian armed forces and police without any distinction of political affiliation, gender or age' and elaborated on trends and patterns, targets, perpetrators, contexts and impact of torture in Kashmir. The mostly utilised, gruesome methods of torture included beating, electrocution, including genitals, stripping naked, being hanged upside down, being kicked, slapped, blindfolded—altogether there were 31 different methods of torture enumerated.[27] Many people do not survive tortures. Protracted militancy and the armed forces iron-fisted response have taken high toll. It is assumed that since 1989 the conflict in IaJK has resulted in killing of more than 70,000 Kashmiris, disappearance of more than 8000 persons and the presence of more than 6000 unmarked mass graves.[28]

The general number of fatalities of the ongoing conflict includes militants, civilians and the members of the armed forces. According to JKKCS, 451 people were killed in Kashmir in 2017 alone, 'including 125 armed forces, 217 militants, 108 civilians and 1 Ikhwānī. Among the 217 militants killed in 2017, 26 were identified as foreigners and 104 militants were unidentified … Among the 108 civilian killings—20 people died in cross LoC shelling, 19 were killed near encounter sites by armed forces, 22 were killed by unknown gunmen, 16 persons were killed by suspected militants, 9 were killed during parliamentary by-elections by armed forces and 4 died in pellet firing, including one who was injured last year and succumbed to his wounds this year. 14 out of the 108 civilians killed were minors'.[29] The APDP and JKCCS declared the year 2018 as the deadliest of the decade as violence intensified, resulting in the killing of at least 586 people in different incidents of violence; 160 were civilians, 267 militants and 159 were members of the Indian armed forces and Jammu and Kashmir police. Among 160 civilians killed in 2018, 18 were women. At least 31 children were killed, which was the highest number in the previous 10 years. That year 267 militants were killed (in the last few years annually approximately 200 militants are declared to be killed by the armed forces) and 159 armed forces/police members.[30]

It is worth to refer to district-wise number of killings in all IaJK, which reflects the internal diversity with excessive violence that mostly affects the Valley, and to a lesser extent, Jammu. According to the data collected by APDP&JKCCS (2018: 9), 'the highest number of civilian killings was recorded in Pulwama district with 28 civilian killings, followed by Kulgam district with 26 civilian killings. District Shopian witnessed 24 civilian killings. The four districts of South Kashmir—Kulgam, Anantnag, Pulwama and Shopian jointly recorded highest number of civilian killings with 85'. Just as in the previous year, four districts of South Kashmir (Anantnag, Kulgam, Pulwama and Shopian) witnessed violence, which increased in the aftermath of Burhan Wani killing in July 2016 (JKCCS, 2017b). North Kashmir districts of Baramulla, Kupwara and

Bandipora recorded 24 civilian killings and the Central Kashmir districts of Srinagar, Ganderbal and Budgam recorded 13 civilian killings (APDP&JKCCS (2018: 9). There was a continuous stark contrast between the Valley and Ladakh (both Kargil and Leh districts, since 2019 constituting union territory of Ladakh), which remained unaffected by the insurgency and conflict in terms of civilians casualties. Jammu recorded high number of 22 civilian killings as a result of cross LoC shelling; some of Jammu's districts were unaffected.

Local HR watchdogs provide information regarding all kinds of violations against people and property. Special attention is devoted to children who are exceedingly aggrieved by the ongoing conflict. In March 2018, the JKCC published a report titled 'Terrorized: Impact of Violence on the Children of Jammu and Kashmir', which highlighted the deliberate and calculated pattern of the violence against children in Kashmir, where they are forced to suffer from the everyday security-related, economic and social difficulties resulting from living in restive area and are consistently subjected to abuses related to the ongoing conflict. Due to regular *hartals* (strikes, closing of businesses by locals in protest against India's policies), curfews, militant activities and ongoing security threats, they are prevented from attending schools, which has detrimental effect on their education process and the entire life. The JKCCS (2018) report provided an approximate number of 318 children (aged 1–17) who lost their lives between 2003 and 2017 in various incidents of violence in Jammu and Kashmir. It constituted 6.95% of the civilian killings within 15 years, as 4571 civilians have been killed in Jammu and Kashmir in the same period (2003–2017).[31]

Another informative documentation published by the two leading local NGOs on 3 July 2019 highlighted the problem of attacks on civilian properties damaged or destroyed during the gunfights between militants and armed forces, cordon and search operations, cross-border shelling, etc. This sort of violence has already been normalised as it happens on a daily basis. Apart from the journalists' fear of the state retribution, this is another reason for media's reduced willingness to provide detailed coverage on these incidents. 'While in the first quarter of 2019, at least 18 cases of destruction of civilian properties were reported in Jammu and Kashmir, in the next three months of April, May and June instances (…) began to be less reported'.[32]

Notes

1. HR abuses in IaJK, particularly in the Valley, rose exponentially with the inception of anti-India insurgency in 1989. An account on the violations in the early 1990s under the administration of Jagmohan, see: Hassan (1992: 80–118).
2. *Vide infra*, §5, HRW (2006b), HRW (2020), AI (2011), AI (2015), AI (2017a), AI (2019a), AI (2019b). On violations in Pakistani-administered Kashmir see: HRW (2006a), AI (33/008/2001), AI (AI 33/014/2001), AI 33/018/2001.
3. MHA (2020).

4. It is banned by Foreign Contribution (Regulation) Act, 2010 and used as a legal tool to control foreign NGOs. The law war was critically assessed by several countries during the 2017 'peer review' by UN Human Rights Council.
5. The NGO assessed Indian policy as 'which hunt'.
6. ICJ (1995: II).
7. ICJ (1995: III).
8. ICJ (1995: 1).
9. ICJ (1995: 1–2).
10. ICJ (1995: 81–82).
11. HRW (2006a: 1).
12. OHCHR (2018b).
13. OHCHR (2018a: 47).
14. OHCHR (2019).
15. OHCR (2018a: 47–48).
16. Jammu and Kashmir Peoples Democratic Party is one of the mainstream Valley-based political parties. More: Balcerowicz–Kuszewska (2022b).
17. IE (2018-06-14).
18. MEA (2018).
19. U.S. Department of State (2018a: 1–2).
20. U.S. Department of State (2018a: 8–12).
21. During the 2018 political turmoil in IaJK the Mehbooba Mufti-led coalition government was reduced to minority upon the withdrawal of 25 members of BJP. Some Kashmiris have numerously accused the Jammu and Kashmir Peoples Democratic Party of betrayal by entering into coalitions with the BJP.
22. OHCHR (2019).
23. Conversation with Kashmiri activists, New Delhi, September 2019.
24. Geelani (2018).
25. Petition (2018-02-15).
26. MSF (2017).
27. APDP&JKCCS (2019a: 13–14).
28. IR (2019: 13).
29. JKCCS (2017a: 4–7).
30. APDP&JKCCS (2018: 4–5).
31. JKCCS (2018: 9).
32. APDP&JKCCS (2019b: 3–9).

5 Selected manifestations of the human rights violations in the Valley

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The ubiquitous presence of the armed forces and the ongoing militancy profoundly and adversely affect the quality of life of the Valley's civilian population.[1] Entangled in counterterrorist campaigns, prolonged states of emergency and permanent conflict, the region's inhabitants are exposed to institutionalised violence, repression and dispossession. They experience deprivation of basic, inalienable internationally recognised rights and freedoms, such as the right to live, liberty, security, to seek and receive an impartial information, equality before the law, peaceful assembly, freedom of movement, of thought, expression, and freedom from arbitrary arrest. To quell popular dissent, the following methods have been used: detention, abductions, fake encounters, extrajudicial killings, raids, curfews, enforced disappearances, cordon and search operations, torture, rape, inhumane and degrading treatment, destruction of properties and other buildings. India's human rights (HR) record was examined under UN Human Rights Council's Universal Periodic Review (UPR) in 2017 (for the third time, earlier in 2008 and 2012). Importantly, the Indian government rejected the recommendations of the Working Group[2] to ratify certain key human rights instruments, such as the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the International Convention for the Protection of All Persons from Enforced Disappearance. Both these recommendations were also made at India's first UPR in 2008. Neither Congress nor BJP-led governments were willing to take concrete steps to ratify the conventions to ensure the implementation of their provisions, to guarantee protection from such abuses and accountability of the perpetrators.

The Valley's indigenous inhabitants are subjected to various forms of repressions; men report significantly more confrontations with almost all kinds of violent events. This can be explained by their higher participation in outdoor activities and protests. Detained men and boys are subjected to cruel tortures, with sophisticated methods, which leave marks for their entire lives and often make them disabled. Women suffer from persistent stress, sexual harassment, including rapes, and socio-economic deprivation once their husbands or sons (often the only or major source of income in the

DOI: 10.4324/9781003196525-6

family) are incarcerated, harmed or forcefully disappeared. The militarisation affects peoples' ability to freely move around, with different kinds of physical hurdles, such as roadblocks, checkpoints, id-controls, etc.[3] All these abuses are so prevalent that they have become a part of Kashmiri daily life, a twisted normalcy.[4]

The following subchapters depict most noteworthy and appalling examples of HR violations in the Valley. They refer to the selected case studies in order to illustrate the scale and systematic patterns of injustice and subjugation and contextualise these abuses within socio-political specificity of the region.

5.1 Violence against women and children

The patterns of violence in Kashmir are largely gendered; men are tortured, killed and disappeared, and women are raped, humiliated and left alone to fend for their families and themselves. Shubh Mathur (2016: 103) contends that in Kashmir 'rape and torture are individual as well as collective wounds'. Moreover, women living in IaJK, particularly in the Kashmir Valley, are affected by all forms of extreme emotional, physical and socio-economic oppression. Various factors, both national and local, lie behind the structured kaleidoscope of gendered marginalisation and economic deprivation. India's authoritarian rhetoric of physical supremacy appropriates their bodies as a special asset which should be utterly controlled by the Hindu majoritarian state. Oppressive patriarchal social norms with profound significance of traditionally perceived gender roles, exacerbated by Islamic radicalisation, result in additional marginalisation and persecution. They are also manifested by the imposition of Islamic dress code and the instructions on how women are allowed to behave in public places by self-proclaimed guardians of women's modesty. Oftentimes, women become victims of the ongoing conflict. In 2017, dozens incidents of braid chopping took place in the Valley, aggravating fear and insecurity among women and girls. As they do not trust the institutions, Kashmiris tried to protect potential victims—the vigilante groups were set up by people to catch the perpetrators. The ruling JKPDP accused separatists for the assaults, HuM alleged that they were orchestrated by India to blame the militants.

In predominantly patriarchal society, Kashmiri women are hit in multifaceted way by enforced disappearances of their husbands, brothers and sons, who often were the sole providers for the families. Referred to as 'half-widows', whose husbands remain untraceable, these women have been struggling to make ends meet and waiting for any information, often since the 1990s. There are approximately 20,000 half widows in the Valley. Sindhuja Parthasaradhy (2016) quotes Haseena, a 50-year-old woman from the village of Dardpora, speaking about her mental breakdown: 'I often wake at night with an uneasy sense of choking and being throttled. My breathlessness and heart palpitations last all night. The next morning an abysmal sense of soreness swamps me'. Another danger which they

have to deal with, especially challenging when the husbands or sons are incarcerated, is sexual harassment. A report published in 2006 by *Médecins Sans Frontières* confirmed that Kashmiri women are among the most threatened by sexual violence in the world. Such abuses are a common strategy used to terrorise and intimidate people in many conflict zones, including Kashmir. This is always an issue considered 'shameful' and not openly discussed. A raped woman is sometimes seen as someone who lost dignity, not as a victim of a heinous crime. According to the report, '11.6% of women experienced sexual violence, 13.3% witnessed it, and 63.9% heard about sexual violence'.[5] Women are vulnerable victims of men in uniform, militants and Ikhwānīs.[6] Custodial rape is another humiliating method to subjugate Kashmiris. Qadri Inzamam and Haziq Qadri (2018) provided a detailed account of the victims of such crimes and quoted Khurram Parvez, arguing that sexual abuse is being used as a weapon of war in Kashmir perpetrated with impunity.

One of the most telling examples of ruthless assault, which was subsequently courageously transformed over the decades into an emblem of staunch resilience and demand for justice, was a tragic event which took place in Kunan-Poshpora. The atrocity perpetrated by security forces at night of 23–24 February 1991 in Kunan and Poshpora, adjacent villages in Kupwara district, remain a disgraceful symbol of the largest recorded instance of mass sexual assault in South Asia, 'the greatest single atrocity by security forces'.[7] During a search and cordon operation by personnel of the 4 Rajputana Rifles, 68th Mountain Brigade of the Indian Army, more than 50 women were gangraped and men kept outside in cold, or locked indoors, interrogated and tortured by the armed forces.[8]

The Indian authorities discredited the allegations, arguing that the assault in Kunan-Poshpora was orchestrated by the militant groups, not the Indian soldiers. A special commission of enquiry pointing out contradictions in the women's testimony,[9] rendered the charge of rape 'baseless', but a report launched by Asia Watch and Physicians for Human Rights classified this rape and other cases of such violence as crimes of war.[10] The Indian authorities tried to contend that the Kunan-Poshpora rape did not happen and staunchly defended the army. Jagmohan Malhotra, who served as Governor of Jammu and Kashmir until 1990, in his lengthy book on Kashmir under his rule, called the rapes 'alleged' and 'a massive hoax'. He denied the facts which had been well documented and adamantly insisted that accusations were an instrument for protesters to cause frequent breakdowns of public order.[11] Basharat Peer (2010: 15) describes Jagmohan in his memoir as 'an Indian bureaucrat infamous for his hatred to Muslims'. Such unprecedented cruelties against the entire villages are portrayed in Kashmir through a communal lens: as assaults on Muslims perpetrated by Hindus; in the eyes of the victims they utterly discredit the Indian administration in Kashmir.

The intimidation and silencing of the victims continues to this day with legal and institutional support of *de jure* impunity of the perpetrators, but

it is sharply juxtaposed by the resilient struggle for justice. For instance, in 2013, a group of 50 women demanded the reinvestigation of the case and filed a Public Interest Litigation in the High Court of Jammu and Kashmir. 2 years later the Army corroborated its doubts against the victims' testimonies and aggressively referred to the case as 'flogging a dead horse'.[12] Conspicuously, it is regularly forbidden even to organise events which commemorate the victims. Every year since 2014, 23 February is commemorated as Kashmiri Women's Resistance Day, inspired by the struggles of the survivors of the mass rape and torture.[13] On 23 February 2017, there was an event scheduled to commemorate the 26th anniversary of the Kunan-Poshpora rape, especially those seven victims who had passed away. One day prior to the event it was banned. The local police (Senior Superintendent of Police [SSP] Srinagar) issued a statement which argued: 'It is submitted that there is apprehension of law and order problem when the issue of Kunan-Poshpora is raised during the event and as such it is not advisable to grant permission for organizing the said event at Hotel Lala Rukh, Lal Chowk Srinagar on 23.02.2017'.[14] This was symptomatic of the state's unbending efforts to curb any debate or events relating to HR violations by the armed forces.

Referring to this tragedy, Batool *et al.* (2016: 2–3) in their revealing book *Do you Remember Kunan Poshpora?* investigate what it is like to be a Kashmiri woman today. They argue: 'For any woman, fighting the dominance of men is hard enough, no matter where you come from, but in Kashmir we carry the burden of living two oppressed identities. We grow up learning two realities of life which, however hard you might try, cannot be separated from each other. To begin with, there is silence, unfortunately taught as a survival technique to women across the society. Patriarchy seems natural and eternal, it is the governing principle of the lives of women, imbibed through society, religion, tradition and culture. But we bear another burden: the silences of an occupation are even more deafening. We must not just fight back against every day threats, like street harassment and sexism, but also against an occupying force that closely monitors every attempt to speak against it and the multitudes of its uniformed representatives dotting the valley. All Kashmiris of our generation have vivid, early memories of guns, the sounds of bullets, of Hindi-speaking army men entering their homes …'.

The brutality of such attacks has a profound impact on male-dominated local communities, especially when whey adhere to 'traditional' values with 'modesty' and 'honour' being regarded women's most crucial assents. The impunity of the perpetrators combined with the toxic, violent masculinity (prevalent in all highly militarised zones) and a lack of sufficient professional, institutional support reinforces the trauma and stigmatisation of the victims. These women suffered twice: from the state, the soldiers who represented the state apparatus—and from their own community and families adhering to rigid social customs and taboos which in many cases rejected them as 'impure', thus practically eliminating the chances to start a family or materialise other plans. The testimony of a child of a woman who was raped during

the Kunan-Poshpora assault illustrates the patterns of mistreatment of women and their children born out of rape: 'When a militant gets killed, thousands of people come out to mourn his death. He is remembered and glorified as a martyr. Our sacrifice is bigger but we have been treated as lepers. We are ridiculed and condemned'.[15]

Another case of rape and murder perpetrated by the security forces, in Shopian, resulted in massive resurgence of militancy and stone throwing in the Valley.[16] Asiya and Neelofar, two sisters-in-law, were abducted, raped and killed in May 2009. Their bodies were found in a shallow river in a highly militarised area, close to security forces camp. The local police at first refused to file an FIR (First Information Report, prepared by the police on the basis of a complaint lodged with the police by the victim, or the victim's representative, of a criminal offence), which made Kashmiris suspicious that police were trying to cover up a crime committed by the military personnel.[17] The details of this crime were presented in a report entitled 'Militarization with Impunity: a Brief on Rape and Murder in Shopian', published by the IPTK.[18] The local government's already tarnished credibility (Omar Abdullah was regarded ineffective in demanding justice for the victims of HR violations) was further damaged among Kashmiris as he was accused of being not assertive vis-à-vis the New Delhi government in the aftermath of the Shopian case. The establishment representatives tried to blame the 'enemies of the state' for false accusations against the army.

These two cases of extreme violence against women illustrate a general pattern of denial, which characterises the conflict since its beginning. Jagmohan exemplifies the Indian establishment's attitude; he consequently denied any violations and saw the alleged similar patterns in Kunan-Poshpora and Shopian—he asserted the accusations were a smear campaign against the army, fabricated by pro-Pakistani elements.[19]

Importantly, a one-sided depiction of women only as helpless victims ultimately fails to provide an explanatory framework for assessing their position in Kashmir. Persistent traumatic experiences empowered many of them and provided with exceptional resilience and courage. Some of them became symbols of resistance and contributed to the transformation of the discourse on gender roles by reclaiming the space and dignity as empowered participants of socio-political dynamics, not only as objectified victims of abuses. This gradual shift becomes more prevalent, albeit still largely uninterrogated; it deserves a separate study and broad contextualisation within the evolving societal norms and Kashmir-focused discourse.

Following Article 370 abrogation, Kashmiri women recorded a protest song titled 'Kashmiri Bella Ciao'.[20] Some of them actively engage in the activities of the Association of Parents of Disappeared Persons (APDP) and other local NGOs, sometimes risking their lives. Parveena Ahangar (*vide supra* §4.2), is a staunch activist who managed to address the plight of other women and families of forcibly disappeared persons, organising them and facilitating their activism. In 1994, she established APDP, a valuable platform

for relatives of enforced and involuntary disappearances victims, which has grown to become an active component of HR activism in the Valley and has its crucial contribution to questioning the discourse on HR situation, largely monopolised by the state. The Association provides support to the families of the disappeared persons, organises monthly sit-ins on the tenth day every month in Srinagar's Pratab Park with the key objectives: (1) to remind of the state oppression, (2) to demand the information and (3) to campaign for bringing an end to such practices.

Particularly noteworthy dispossession, often accompanied by local exclusion and a denial of political rights, is experienced by several hundred Pakistani-origin wives (some come from PaJK, some from other regions of Pakistan) of former militants, who had crossed the border to Pakistan in the 1990s for insurgency training. When in 2010 the J&K Omar Abdullah's government announced a rehabilitation policy for those who crossed the LoC in the years 1989–2009, many of them returned to IaJK—with their Pakistani wives and children. These women were neither officially recognised nor granted the Indian citizenship. The unresolved situation leads to tragedies: one of Pakistani women, Saira Begum, committed suicide in 2014, the same year, ex-militant Syed Bashir Bukhari set himself on fire after a failed struggle to provide Indian citizenship for his Pakistani wife and local schools' refusal to admit their son. In recent years, some of them stage protests against discrimination and, willing to ensure better future for their children, demand travel documents to go back to Pakistan (their passports were often destroyed upon the arrival to India). As of early 2021, the issue remained unaddressed by Lt Governor Manoj Sinha's administration, but it could be resolved in cooperation between India and Pakistan, as a goodwill gesture.

Kashmiri children are subjected to traumatic experiences, not only as affected witnesses of cruelty, but also as victims of killings and abuses. Additionally, they are recruited by the militants. A Report by the UN Secretary General António Guterres 'Children in Armed Conflicts' published on 16 May 2018, stated in clause 217 that in J&K children were affected by incidents of violence between armed groups and the Government. Clause 204 pointed out the problem of sexual violence against girls by the security forces. Clause 218 highlighted the recruitment and use of children by the militant groups, such as HuM and JeM, for clashes with the security forces. Two children joined LeT and were reportedly killed in an encounter with the armed forces. Moreover, 'unverified' reports claimed the use of children 'as informants and spies by national security forces'.[21] Notably, the report from 2019 declared the year 2018 as the worst in terms of the number of children caught up and killed in armed conflicts since the UN began to monitor this problem.

Killings of teenagers who either take part in the protests or are random passer byes regularly spark popular protests in the Valley. Stone pelters are subjected to arbitrary arrests, tortures and other forms of violence: in May 2018, a video was published in which an 18-year old Kashmiri stone-thrower was deliberately knocked down, run over and crushed to death in

broad daylight by a police vehicle while participating in protests in downtown Srinagar, an area which often breaks into stone-throwing.[22] Children who are accused of supporting militants are arrested under the JKPSA (the act allows the detention of children following an amendment in 2012). For example, in 2012, Indian Police produced 12-year-old Faizan Bashir, a resident of Eidgah, before a court in Srinagar, to be prosecuted as an adult on charges of 'waging war against the state' and 'attempt to murder'. The practice continues with juveniles being arrested and incarcerated as adults. They are often kept far from their families and deprived of the rights guaranteed by international HR standards.

Traumatic experiences of the youngest negatively impact physical, emotional or mental health and affect their future. On 30 June 2020, Bashir Ahmad Khan, a civil contractor, was killed in Sopore (a town in northern Kashmir) during the alleged encounter of the CRPF with LeT terrorists. The shocking photo of his 3-year old grandson sitting on his blood-stained body lying on the road instantly circulated in local media (even by J&K Police on Twitter[23]) and became a metaphor for tyranny and occupation. Followed by the short films showing the armed men feeding the child with sweets, it triggered a massive outrage among Kashmiris. There were divergent accounts regarding the circumstances of the killing, though: Khan's grieving family accused the paramilitaries of indiscriminate killing, which they refuted, claiming he died during the fire exchange with the militants who attacked the convoy, and the family was pressurised by the militants to blame the armed forces.[24] This case, apart from inflicting unparallel trauma on the boy, was yet another exemplification of collective suffering from the ongoing militancy and militarisation, which affects the most vulnerable, and an affirmation of profound distrust of Kashmiris towards the narratives of the men in uniforms.

In the circumstances of a permanent conflict and insecurity, Kashmiri youths are particularly exposed to a wide range of abuses, including sexual violence. Some cases reach public opinion and evoke protests, especially if the perpetrators represent the armed forces. In April 2016, a soldier from a nearby military watch post allegedly molested a 16-year old school girl in a Handwara toilet. Following the event, she remained in police custody for a month for her 'protection'. Her father accused policemen of harassing her and forcing to give false statements while she was incarcerated.[25] The Handwara incident sparked protests against the soldiers' impunity, during which the people burnt down an army post, which led to firing and killing of a few protesters. The army denied any allegations.

The impoverished tribal communities, which had become pawns in the local political tussle, were profoundly traumatised by this case. It received broad coverage and condemnation in Indian and international media. One particularly brutal crime became a gruesome symbol of four factors that incessantly persist in the conflict zone: Hindu supremacism, excessive militarisation, male-dominated social structures/discourses, and economic disenfranchisement of the vulnerable communities. In January 2018,

Asifa Bano, an 8-year-old girl, was abducted, drugged, raped for three days and killed in Kathua district by police personnel. The perpetrators were high-caste Hindus and the girl was a Muslim; police officers were accused of attempting to destroy evidence and cover up the crime. It had a communal background and, apart from brutal torture and murder of a child, it was aimed at intimidating and chasing away from Hiranagar *tehsil*[26] the marginalised nomadic tribe of Bakerwals.[27] This tragedy led to a major tension between the then Kashmiri ruling alliance: the BJP and Mehbooba Mufti's Jammu and Kashmir Peoples Democratic Party.

5.2 Mass graves

The discovery of unmarked graves and mass graves of persons killed during the extrajudicial/summary executions, alleged gun battles or cross-fire between the armed forces and militants in IaJK, was one of the grimmest proofs of systemic HR violations in Kashmir in the 1990s.[28] The buried bodies were referred to by Indian authorities as unidentified foreign terrorists who had illegally infiltrated the LoC to join the insurgency; however, the locals argued that they were their neighbours, relatives, friends, etc. Some of them were killed in the 1990s, during the most fierce phase of the anti-Indian insurgency.

The local NGOs put enormous effort to document these crimes. In November 2009, the Srinagar-based IPTK published a report titled 'Buried evidence', which provided detailed information, supplemented with photographs, based on exhaustive 3-year research in the border districts of Bandipora, Baramulla and Kupwara in north-western Kashmir.[29] The report discussed 'encounter' killings, which have later been verified as 'fake encounters', and instances of manufacturing the identities of victims by security forces. It emphasised that sometimes upon the identification of the body, it was found that civilians from one geographic area in Kashmir were killed in another area. According to the document, 'in Baramulla, of the 1,122 graves, approximately 99 percent of those buried were men. Gravediggers and caretakers were unable to give an exact count, given the extent of defacement of some of the bodies. In Kupwara, of the 1,453 graves, 1,451 were of men and 2 of women. In Bandipora, all 125 graves were of men'. The authors argued that besides professional gravediggers, some local residents were forced to prepare the graves and bury the bodies[30]; they were also not remunerated for their work.

Using locals to bury the dead by the army and the police was corroborated by a chilling first-hand account of Atta Mohammad Khan's traumatising memories, titled 'I Live with the Dead', published in 2013. He was forced to dig graves for the bodies, most of which were claimed by the police to be the 'foreign militants' (the practice used by the authorities to intentionally exaggerate the scale of cross-border infiltration from Pakistan and reject the accusations of killings of local civilians/militants). Khan recounted: 'The police would come at midnight, sometimes early morning, to hand over the bodies

to me. After every burial I would go home and wash my blood-drenched clothes. Most of the dead had multiple bruises and some had even partly decomposed. The bullet wounds, torture marks and the scary appearance of the bodies are still afresh in my mind'.[31] He lived near the LoC in Bimyar, the village which received approximately 230 bodies, mostly bullet ridden. Khan, who died in 2016 at the age of 75, was honoured by Kashmiris, including the APDP, for his courage to speak out the truth despite being intimidated by the police.

On 24 October 2017, the State Human Rights Commission (SHRC[32]) admitted the existence of unmarked and mass graves in Poonch and Rajouri districts. In its order, welcomed by the APDP, the Commission urged the government to undertake a comprehensive investigation including the DNA testing, carbon dating and other forensic techniques. The APDP published a press release pointing out that 'The families of disappeared amid constant agony and distress have continuously been struggling for knowing the truth behind enforced disappearances in Jammu and Kashmir'. The NGO today reiterates that unlike in the past, the government of India, a claimant of the permanent seat in the UNSC, 'must initiate a comprehensive investigation into all the unknown, unmarked and mass graves discovered across Jammu and Kashmir, to ascertain the truth behind the enforced disappearance of more than 8000 people of Jammu and Kashmir'. It emphasises that the SHRC's order was in line with its 2011 judgment in which the Commission had found that 'in the 38 graveyards, which they have investigated, they have documented 2730 graves, out of which 2156 graves are still unidentified graves, and 574 persons were later after being buried as foreign militants, identified as local residents of Jammu and Kashmir,[33] probably the victims of the enforced disappearances'.[34]

Khurram Parvez, one of the reports' authors, acknowledged in 2016 that 7000 unmarked graves and mass graves in five districts—Baramulla, Kupwara, Bandipora in North Kashmir and Poonch and Rajouri in Jammu—were documented. In July 2018, the APDP aiming to highlight the problem and prevent the cases of enforced disappearances in Kashmir from being forgotten, published a press release on the website of the AFAD (a federation of HR organisations working specifically on the issue of involuntary disappearances in Asia), where it confirmed that more than 8000 people have disappeared since 1989. It urged to push an enquiry of the 132 cases of disappearance in Banihal Tehsil (Ramban district, Jammu division) and 507 cases of disappearance in Baramulla and Bandipora districts (Kashmir division).[35]

The tireless persistence of local and international NGOs in documenting these gruesome crimes allowed them to come out both in India and at international level: already on 10 July 2008, the European Parliament adopted a resolution which condemned HR violations and called on Indian government to undertake independent investigation into all mass graves. India has never fulfilled that call, due to various reasons, including the unwillingness to admit the scale of violations and extremely high cost of

mass grave exhumation and DNA profiling; as of 2020 a transparent, unbiased investigation by the federal administration was not conducted.

5.3 Pellet-firing shotguns

Pellet guns (shotguns), specially prepared for that purpose and introduced already by the United Progressive Alliance government (UPA, a coalition of parties which won the 2004 elections, with the major role of Indian National Congress), are widely used by the armed forces in the Kashmir Valley clashes as a weapon against popular protests and stone-throwers since at least 2010. According to the authorities, the major purpose for their introduction was to control the agitated crowds and at the same time minimise the number of deaths during the armed forces operations against the protesters.[36] The 'less-lethal' approach was widely declared by the Indian policymakers—Kashmiri people became a testing target for such technology—the armed forces used long range acoustic devices (LRADs, developed by California-based Genasys Inc., used *inter alia* by the United States, Israel), sticky foam that immobilises people, fired out of a backpack-mounted dispenser, shock batons and the world's hottest chilli pepper of Assam (certified by Guinness World Records as the hottest in the world, causes enormously painful burns when it comes in contact with skin) in pepper grenades.[37] They did not replace the pellet guns. Although pellets can inflict serious, life-long injuries or even kill a person, Indian governments have considered them a 'non-lethal weapon' necessary to disperse the agitated masses. Non-lethal argument was often raised by them to prove that such weapon is used because the authorities 'care' about the people; pellet guns were, therefore, introduced in Kashmir under the pretext that they allegedly rarely harm the target. It cannot be confirmed, though, as the paramilitary forces and police tend to use them at close range aiming at chests and heads of protesters: already in 2010 Irshad Ahmad Parray, a 9-year old boy from Anantnag was killed by pellet injuries in his chest and abdomen.[38] Pellet guns were also frequently used by the CRPF and Jammu and Kashmir Police during the outbreak of violence in 2016. By 2018, reportedly at least 14 people were killed by using this weapon.[39] The use of pellet guns as a method of crowd control has been repeatedly questioned by HR organisations because of several deaths and numerous injuries. Moreover, as Siddarth David observes, 'the perception of their harmlessness enhances the destructive potential of these so-called non-lethal weapons'. He also raises the larger ethical question of whether any form of physical pain could be inflicted to control violent crowds.[40]

Across the world, metal pellets have been proved to inflict serious injuries, permanent disability and death. This type of weapon was introduced by the British in response to the civil unrest in Northern Ireland in 1970.[41] In Kashmir, it was first used during mass protests in August 2010, when a crowd attempted to attack the RR army camp in Sopore. Bullets, pellets, rubber bullets and tear gas shells are regularly used by the police in Kashmir

as a means of crowd control. Pellet guns are only theoretically 'non-lethal'; they shoot tiny pieces of lead which may not only severely injure the eye or even make a person blind, but in serious cases, even cause death. They are especially dangerous when used at close range (a common practice in Kashmir) as the pellets have no chance to disperse. The minimum range for using such weapons is at least 50 meters.[42] According to the AI, which urged the Indian government to stop using pellet guns, the manner in which they are operated in Kashmir violates international standards on the use of force.[43] The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990 stipulate that the forces may use force with maximum restraint 'only when strictly necessary and to the extent required for the performance of their duty', and it should be commensurate with due respect for human rights'. Principle 9 of the special provisions specifies that 'intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life'. According to Section 5, law enforcement officials must minimise damage and injury and respect and preserve human life, ensuring that assistance and medical aid reaches the victims and their relatives are notified. Respective governments are obliged to punish under their law any arbitrary or abusive use of force and firearms by law enforcement officials.[44]

With regard to this kind of weapon used against civilians and militants in Kashmir, a study was conducted between May and September 2010 by the physicians of the Sher-i-Kashmir Institute of Medical Sciences in Srinagar, who had to deal with the challenge of treating victims in the aftermath of massive unrest. The doctors argued that pellet guns may be very harmful due to the way they were used by the military forces: 'an individual shotgun pellet is comparatively small, though victims are usually hit by large numbers of pellets simultaneously; the degree of injury is severe, particularly when the wound is inflicted at close range. The patients present with multiple pellets, sometimes hundreds causing diagnostic difficulties to the treating clinicians'.[45] Notably, Kashmir conflict led to forced migration of educated people, including the medical personnel. Some doctors were abducted and killed by unknown assailants,[46] for example, in 1993, Abdul Ahad Guroo, a renowned Srinagar surgeon at the Sher-i-Kashmir Institute of Medical Sciences, HR activist and a supporter of Kashmir independence. Hard conditions of work, lack of appropriate medical equipment, attacks and other conflict-related risks continue to motivate some doctors to leave the Valley, which further restricts the access to healthcare in emergency situations for the residents of Kashmir. A report published by International Commission of Jurists as early as 1995, stated that those doctors who 'remain in the Valley of Kashmir are in a precarious situation. In trying to help the sick and needy, they become the targets of both government forces and militant groups who fail to divorce political concerns from humanitarian considerations. In this context, it is the civilians who are hurt most, and it is they who are regrettably the pawns in a vicious game'.[47] Restricted access to essential health services (especially during Covid-19 pandemic) and the insufficient number of

trained personnel is especially tragic in the conditions of permanent clashes which harm unarmed civilians. It provides another example of systemic and systematic HR violations.

The peak use of pellet guns came in the summer of 2016 during the counterinsurgency retaliation campaign against protesters after the killing of HuM commander, Burhan Wani. The Pellet Victims Welfare Trust (PVWT) was established in early 2017 as an informal group representing the interests of the victims. A briefing released by Amnesty International India in 2017 illustrated the cases of 88 people whose eyesight was damaged by metal pellets fired from shotguns used by the Jammu and Kashmir Police (JKP) and CRPF between 2014 and 2017.[48] The news about blinded people and the impunity of the armed forces evoked international criticism.[49] Camillo Pasquarelli, an Italian photographer, visited the Valley and prepared a distressing black-and-white photo relation of the blinded victims.[50] The AI launched a campaign which called on the central and J&K governments to immediately stop the use of pellet-firing shotguns and act in accordance with international HR standards.

The report published by the ADPD in 2019, corroborated the data presented by the AI. It stressed that in 2016 pellet guns were used regularly: 'over 80 civilians were killed by Indian forces and more than 15,000 persons were injured. Among the injuries, 4,500 were due to pellet-firing shotguns. More than 352 civilians were partially or completely blinded by pellet-firing shotguns'.[51] The majority of victims were young people, below the age of 25.[52] People called it the 'dead eye epidemic'. Many injured avoided registering out of fear and treated their wounds at home or in private hospitals.[53] The report provided testimonies of 23 people who were blinded by pellet guns. It recommended an unconditional ban on the use of pellet-firing shotguns in Jammu & Kashmir and strongly criticised local politicians and their policy of compromise towards New Delhi: 'In February 2014 Mehbooba Mufti, then President of the Jammu and Kashmir Peoples Democratic Party (PDP) and Member of Parliament from Anantnag constituency in the Lok Sabha, had staged a walkout from the Jammu and Kashmir Legislative Assembly calling for a ban on the use of pellet guns. With the PDP coming to power in the Valley two years later in a coalition government formed with the BJP, her party termed the use of pellet guns a "necessary evil" in September 2016 and refused to ban its use'.[54] In 2018, a 19-month-old girl was the youngest victim of pellet guns eye injury—it sparked massive protests.

The reasons for introducing the non-lethal weapons by the authorities seemed justified—preventing from killing the unarmed protesters and better crowd control. Nonetheless, the way they were used—from close range, aiming at chest, abdomen or head—proved that this goal was not materialised. The callous approach of the state apparatus and security forces towards Kashmiris may be symbolised by the words of Javaid Gilani, the Inspector General of Police, who in May 2015 justified pellet gun blindings while referring to the case of 16-year old Hamid. 'How can a deterrent be set then?

How are stone-throwers to be stopped?'[55] Gautam Navlakha, a renowned Indian HR activist, wrote in his foreword to Mannan Bukhari's[56] book on pellet guns that the fact that 'IG of police found blindings acceptable should remind us of the old adage, that it is not the guns that kill, it is man who kills. Even air guns can turn fatal if the man wielding is ordered to believe that it is all right to maim or kill protestors'.[57] In 2019, pellet guns were still regularly introduced during encounters with militants and as a crowd control tool and their victims were often teenagers.[58] After Indian forces used pellet-firing shotguns to disperse crowds under Covid-19-related ban during a Muharram procession on 29 August 2020, injuring participants and bystanders, the HRW urged Indian government to stop using them. The organisation referred to the UN 2020 guidance on less-lethal weapons which urges law enforcement authorities to respect and protect the right of peaceful assembly, even if is considered unlawful by the authorities, and states: 'Multiple projectiles fired at the same time are inaccurate and, in general, their use cannot comply with the principles of necessity and proportionality. Metal pellets, such as those fired from shotguns, should never be used'.[59]

5.4 Fake encounters

Confrontations with the militants occur with regular frequency and are crucial part of the armed forces' anti-insurgency operations. Apart from the clashes with real *jihādists*, the fake encounters (FE) take place, where the alleged fighters are extrajudicially killed during staged confrontations and the authorities claim it took place in a gunfight. In some cases, such encounters receive the state's tacit backing, often resulting in awards and promotions of the armed personnel for what is portrayed as successful counterinsurgency actions.[60] FE bolster hostile perception of the armed forces as occupiers among the Kashmiri civilians as even when it is proved that the victims were not involved in militancy, the culprits typically enjoy impunity. Such structural violence enhances the sense of helplessness of civilians, who are the main victims of the armed forces-militants clashes.

A selected, noteworthy FE case study refers to a brutal, targeted massacre perpetrated on 20 March 2000 in Chattisinghpora village by Pakistani-sponsored LeT terrorists. They executed 36 Sikh men with the purpose to escalate communal tensions in IaJK, on the eve of then-US President Bill Clinton's pivotal visit to India. In retaliation, the soldiers from 7 Rasthriya Rifles in cooperation with the police, claimed they killed five terrorists on 25 March 2000 in Pathribal village (Anantnag district). Yet, the villagers accused soldiers of killing local people, previously abducted by the armed forces, not the real culprits. During protests against the extrajudicial killings, the CFPF opened fire, killing 8 people. Both Muslim villagers and the Sikh community were the victims of this confrontation. Chattisinghpora massacre was a turning point in Kashmir insurgency as it targeted the Sikh minority, till then spared from militants' attacks. The real perpetrators were

never caught, yet in 2010 LeT admitted to having carried out the massacre. In January 2014, the Military Court acquitted the security forces responsible for Pathribal fake encounter and assumed that there was no proof that civilians, not terrorists, were killed. As in other such cases, no legal action has been taken against the responsible personnel.[61]

In another case, in April 2010, three young civilians were killed in the Machil sector near the LoC and dubbed by the army as Pakistani terrorists, who had tried to infiltrate the border with AK rifles, ammunition and Pakistani currency. It triggered massive outrage in the Valley. Five soldiers from 4 Rajputana Rifles were convicted by the General Court Martial for this killing in 2014, which was regarded as watershed moment by local authorities, but in July 2017, the Military Court suspended their life sentences. The army claimed that the soldiers were punished under pressure of local political parties. It was received by Kashmiris as another manifestation of state-authorised injustice.

On 18 July 2020, three young men were killed by the army (RR) in Amshipora village (Shopian district) in a staged encounter to claim reward money. In an unprecedented statement in September 2020, following an internal probe, the army admitted to having exceeded the powers assigned under the AFSPA.[62] The DNA profiling gave no doubts and enforced the accountability on the armed forces: it confirmed that the three victims were the labourers from Jammu's Rajouri district, who went to work to Shopian, not the militants. Their pictures were widely shared on social media, which enabled their recognition by families. In December 2020, the army took the case from the civilian to military court, which raised doubts about the proceedings' objectiveness.

Meticulously observing India's policies and such events in IaJK, Pakistan conveniently uses the fake encounter accusations in its anti-India narrative, also when the militants are killed. Moreover, the fighters are habitually eulogised as heroes of Kashmiri Muslims' struggle against Indian (Hindu) oppression in what Pakistan officially refers to as the 'Illegally Occupied Jammu and Kashmir'. For example, when Riyaz Naikoo (former math teacher), Burhan Wani's successor as a commander of HuM, responsible for launching the attacks on Indian armed forces and police, was killed in Pulwama in May 2020 (in one of the operations conducted by the army, SOG and CRPF), Pakistan condemned India for killing a 'resistance fighter' in a staged gunfight.

5.5 Media crackdown

Intimidation of independent journalism and critical accounts on the states' domestic and external policies genuinely undermines basic HR and civil liberties, including the right to unbiased information and research, and freedom of expression. It characterises authoritarian and hybrid regimes across the world and becomes gradually and systemically introduced in declining democracies. The BJP-led government has increasingly and repeatedly curtailed media freedom and its right to deliver critical coverage; journalists are intimidated, and if they dare to report, they are physically

punished, also by the armed forces.[63] In the aftermath of the IaJK's bifurcation, the clampdown on press intensified, with more journalists booked under the Unlawful Activities (Prevention) Act (UAPA). This law is regularly invoked to press charges against HR activists or journalists in India by accusing them of anti-national agenda, spreading misinformation, supporting secessionist movements[64] and 'glorifying terrorism'. Kashmiri journalists were intimidated and feared the state retribution, yet they organised protests in Srinagar; in November 2019, they condemned what they viewed as a colonial style of censorship.

These repressive practices lead to a gradual deterioration of India's international position regarding press freedom. The Reporters Without Borders's (RSF) World Press Freedom Index 2019 ranked India at 140th position (score: 45.67, where 0=the best) out of 180 countries; in 2020, the country's position further fell to 142th position (score 31.35).[65] RSF highlighted physical attacks on journalists as a major area of concern, pointing out that at least six Indian journalists were killed in connection with their work in 2018 (no murders in 2019). The emphasis was placed on constant violations of the freedom of the press under the BJP government, which increased during the 2019 election campaign and thereafter, especially in 'sensitive' areas, such as Kashmir: 'Those who espouse Hindutva, the ideology that gave rise to Hindu nationalism, are trying to purge all manifestations of "anti-national" thought from the national debate. (…) The coverage of regions that the authorities regard as sensitive, such as Kashmir, continues to be very difficult. Foreign reporters are barred from Kashmir and the Internet is often disconnected. When not detained, Kashmiri journalists working for local media outlets are often the targets of violence by paramilitaries acting with the central government's tacit consent'.[66] In 2020, RSF emphasised that India's worse freedom of the press position was profoundly affected by the situation in Kashmir: 'after rescinding the state's autonomy, the federal government shut down fixed line and mobile Internet connections completely for several months, making it virtually impossible for journalists to cover what was happening in what has become *a vast open prison*' (italics—AK).[67]

Notably, in 2013 during the Congress rule, the authors of the same index pointed out that four journalists were killed in India in 2012, which fell to 140th position. The report said: 'In India, the "world's biggest democracy", the authorities insist on censoring the Web and imposing more and more taboos, while violence against journalists goes unpunished and the regions of Kashmir and Chhattisgarh become increasingly isolated'.[68] Violence against journalists and multidimensional restrictions are, therefore, not a new phenomenon of Narendra Modi's government. Nonetheless, the clampdown on press freedom has escalated since 2014 quantitatively (the number of arrests, hearings, closure of the newspapers) and qualitatively (the tendency to entirely subjugate media for propaganda purposes, whereas in the past, there was more space and liberty left for those who expressed discontent).

In May 2017, police attacked journalists who were covering protests which erupted after Friday prayers in Sopore, a town in Baramulla district. The International Federation of Journalists (IFJ) and the Indian Journalists Union (IJU) strongly condemned the violence.[69] In February 2018, Reporters Without Borders urged a New Delhi court to release Kamran Yousuf, a Kashmiri photojournalist.[70] Arrested on 5 September 2017, he was facing the death sentence for alleged participation in a demonstration in Kashmir. He was accused of anti-Indian criminal conspiracy by attending the protest where stones were thrown at the security forces. Significantly, he was ranked among the most promising young Kashmiri photojournalists[71] and was recognised for his professionalism and impartiality by his colleagues. When he photographed the funerals of militants in the restive areas of South Kashmir (especially after the killing of Burhan Wani in July 2016), he claimed being beaten by the CRPF. This case demonstrated that reporting from the conflict zone is risky not only because of the risk of being subjected to violence, but also due to the policies imposed by the authorities who use their legislations to restrict access to an independent coverage. According to Arundhati Roy (2011b), 'The art of controlling Kashmiri journalists and ordinary people with a deadly combination of bribes, threats, blackmail and a whole spectrum of unutterable cruelty has evolved into a twisted art form'. Kashmir has become a dangerous, even life-threatening place for impartial coverage. Between 1990 and 2018, 19 journalists were killed by the militants, state police or the Indian armed forces[72]; many others were intimidated, threatened or tortured.

Passport applications of some activists who question the state's official Kashmir narrative and discuss HR, or India's policy vis-à-vis Kashmir, are regularly denied.[73] They are intimidated or booked under existing legal acts (JKPSA, UAPA); the arrest of Khurram Parvez may serve as an example (*vide supra* §3.4). Those who are considered pro-Kashmiri by the Indian authorities are subjected to regular institutionalised harassment and state-imposed detentions. Gautam Navlakha, the outspoken Indian journalist and HR activist, Secretary of the People's Union for Democratic Rights, and convener of IPTK, is one of them. In 2011, he was denied entry to Srinagar and deported to New Delhi.[74] In 2018 and 2020, he was one of the activists incarcerated over false allegations of inciting violence that broke out in Bhima Koregaon on 1 January 2018 and having ties with Maoist insurgents. He was also charged under the UAPA.

The APDP report published in December 2019, highlighted the intensified pressure on Kashmiri journalists after 5 August. The editors of *Greater Kashmir* and *Kashmir Reader* were 'grilled by NIA'[75],National Investigation Agency, India's task force dealing with terror related crimes, empowered by the NIA (Amendment Bill), 2019. The government advertisements were stopped to these and other newspapers (it had impact on the earnings of journalists which fell abruptly—AK). The aim was to intimidate journalists and to send a message to other publishers that New Delhi will not tolerate news reporting that opposes the state-led narrative. Individual journalists received

warnings that they might be targeted by the Indian security agencies[76]; some were questioned by counter-insurgency forces and booked under the UAPA.

Nonetheless, many professionals from Kashmir and India, civil society members, independent media outlets, journalists and photojournalists, scholars, activists etc., continue to counter the state-imposed or *jihādists*-promoted narratives. They advocate a just, fact-based, de-communalised and reasonable approach to the Kashmir debate, peace process between India and Pakistan, provide critical and unbiased analysis of the governments' policies, highlighting the injustices in Kashmir,[77] even if they risk threats, intimidation and persecution. Following J&K's bifurcation, it became even more difficult to provide an independent on-spot information by unbiased media. Therefore, it came as an unprecedented symbol of international appreciation when in 2020 three renowned photojournalists, reporting from IaJK: Dar Yasin, Mukhtar Khan and Channi Anand from the Associated Press, received the prestigious Pulitzer Prize. The award in feature photography was given for their restless, courageous, life-risky work, presenting, as Pulitzer Prize Board stressed, 'striking images captured during a communications blackout in Kashmir depicting life in the contested territory as India stripped it of its semi-autonomy'. Referring to IaJK as 'contested territory', immensely challenged New Delhi's official rhetoric. The prize had encouraging impact on Kashmiri journalists and photographers, as it signified the international recognition of heart-wrenching reports from Kashmir, which, despite systemic coercive means and intense crackdown, managed to reach more international recipients.

Notes

1. On HR violations by separatists, *vide supra*, §3.
2. UN HRC (2017).
3. Kramer (2017: 177).
4. Conversation with Kashmiri students in New Delhi, September 2019.
5. Fromm–Kemmere (2006: 3–4).
6. Manecksha (2017: 1–2).
7. Christopher Tomas from *The Times*, quoted by Victoria Schofield (2003: 156).
8. Ghosh (2014), Schofield (2003: 156–157).
9. Mushtaq (2020).
10. AW&PHR (1993).
11. Jagmohan (2012: 799–800).
12. Mushtaq (2020).
13. More publications on Kashmiri women's resistance: CKSC.
14. DPOR (2017).
15. LKH (2017-02-23).
16. Manecksha (2017: xxx).
17. Duschinski–Hoffman (2018: 48).
18. IPTHRJ (2009).
19. Jagmohan (2012: 796).
20. Kashmiri Bella Ciao (2020). Originally, it is an Italian protest folk song of which different versions were adopted worldwide as a symbol of anti-fascist resistance and freedom.

21. S/2018/465.
22. Chakravarty (2018).
23. Amnesty International rightly assessed publishing the identity of a minor witness of the crime as tantamount to violation of Article 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015.
24. Azaan (2020).
25. Yousuf (2016), Ghosh (2016).
26. Bakerwals move through the Pir Panjal range of IaJK and are mostly goatherds and shepherds. ToI (2018-04-12).
27. JKCCS (2018: 9).
28. Kuszewska (2015: 232–233).
29. IPTK (2009). Khalid Mahmood, the first Member of Parliament of Kashmiri heritage, referred to this report in his speech during the January 2017 debate on Kashmir in the House of Commons. See: HoC (2017).
30. IPTK (2009: 11–12, 15).
31. Khan (2013).
32. More on SHRC, *vide infra*, §6.
33. The number of the graves referred to by APDP: 3844 (2717 in Poonch and 1127 in Rajouri). See: Afad (2017). See also: IPTK (2009: 16).
34. Bhan–Bukhari (2017).
35. AFAD (2018-07-13).
36. *The Hindu* (2015-05-27).
37. Azaan (2017).
38. *The Hindu* (2015-05-27).
39. AI (2018).
40. David (2017: 124).
41. David (2017: 125).
42. Singh (2016).
43. AI (2017b).
44. OHCHR (1990).
45. Tabish–Wani–Ahmad et al. (2013: 5).
46. Wajahat Habibullah (2009: 81–82), a former Indian civil service representative working in Kashmir, claims that the doctor, who had connections with the JKLF, was a victim of a police orchestrated murder. He was killed by HuM militant, who, while being incarcerated, had made a deal with the police to be released if he kills the doctor. When he murdered Dr. Guroo, he was instantly killed and the director general of the police 'trumpeted his death as a triumph for the security forces, who had killed a dangerous terrorist'.
47. ICJ (1995: 74).
48. AI (2017a).
49. Barry (2016), Waheed (2016).
50. See: Perrigo (2018).
51. APDP (2019a).
52. APDP (2019a).
53. JKCCS (2016).
54. JKCCS (2016).
55. *The Hindu* (2015-05-27).
56. Mannan Bukhari (2015b), a Kashmir-born HR activist, is also an author of a documentary film *Shattered Dreams* where he presents the tragedies of using the pellet guns in Kashmir and dedicates his film to the victims.
57. Navlakha's foreword in: Bukhari (2015a: 1–2).
58. *Dispatch* (2019-05-21).
59. OHCHR (2020: 23–24).

60. Discussion with Kashmiri HR activist, Srinagar 2014.
61. ET (2014-01-27).
62. Maqbool (2020).
63. Conversations with David Devadas, Indian journalist and author. Warsaw, 27 October 2014 and New Delhi, 7 October 2019.
64. The UAPA was also used to ban Jamaat-e-Islami Jammu and Kashmir for 5 years, following the 14 February 2019 terrorist attack in Pulwama (40 CRPF personnel were killed), under the charges of advocating secessionism.
65. RSF (2019), RSF (2020), *vide supra* §3.1.
66. RSF (2019).
67. RSF (2020).
68. RSF (2013).
69. IFJ (2017-05-09).
70. RSF (2018-02-20).
71. Tantray (2017).
72. Among others, on 13 February 1990 Lassa Kaul, the director of Doordarshan Kashmir (Indian public broadcaster, owned by the Ministry of Information and Broadcasting) was killed by the militants. On 11 May 2008, Ashok Sodhi of *Daily Excelsior* was killed in a crossfire between militants and armed forces in Jammu, on 13 August 2008, Javed Ahmed Mir was shot dead while covering a demonstration. In 2018, Shujaat Bukhari, renowned founding editor-in-chief of *Rising Kashmir* was assassinated outside his office by gunmen who came on a motorcycle. The state police identified LeT militants as perpetrators, yet speculations remained.
73. A conversation with Imroz Parvez in Srinagar, 2014.
74. IPTK (2011), conversation with Gautam Navlakha, September 2014.
75. One of them was Fayaz Kaloo, the editor-in-chief of a prominent daily *Greater Kashmir,* who was questioned for several days in July 2019. The NIA justified the probe as the attempt to identify the chain of players behind the financing of terrorist activities. CPJ (2019-07-09).
76. APDP (2019b: 76).
77. For example *The Caravan* magazine.

6 Human rights after Article 370 abrogation

Agnieszka Kuszewska

6.1 A new chapter in Kashmir's history

The long-term stance of the BJP vis-à-vis Kashmir culminated in the political decisions in 2019, which were coordinated by political leaders of the ruling party: Prime Minister Narendra Modi and Minister of Home Affairs Amit Shah. On the recommendation of the Indian Parliament, Ram Nath Kovind, the President of India, dismantled Article 370 and, by implication, Article 35A, reorganised the State of J&K and changed its legal status. On 5 and 6 August 2019, two presidential orders, C.O. 272[1] and C.O. 273[2], were issued as the legal basis for the abrogation of Article 370 and Article 35A. The bifurcation and thus eradication of the former J&K state's territorial integrity through the Jammu and Kashmir Reorganisation Act of 2019 (JKRA), passed by Lok Sabha on 6 August, dismantled the legal framework of India-Kashmir relations and transformed the centre's control over Kashmir into a seemingly irrevocable takeover of its territory; 'the legal fiction of special status is now legal history'.[3] According to the legislation[4], on 31 October 2019, Jammu and Kashmir, which has been part of the Union of India since 1947, ceased to be a state and was bifurcated into two union territories (UTs): Jammu and Kashmir (UT with state legislature) and Ladakh (UT without state legislature). It eliminated the already limited protection guaranteed to Jammu and Kashmir along with its self-governance, territorial integrity and the collective rights to land and livelihood.[5] A government-led campaign was introduced, aimed at proving legal validity and justifying the motives for this unconstitutional seizure and subsequent intensified militarisation.[6]

At midnight on 4 August 2019, expecting widespread resistance, a complete blackout in the Kashmir Valley was imposed;[7] the region was immediately put under an indefinite curfew and the people, disoriented and terrified by the situation, were prohibited from all movement and assembly.[8] Earlier that day, anticipating the upcoming crisis, local political leaders organised an all-party meeting at Farook Abdullah's[9] Gupkar residence and unanimously passed Gupkar Declaration (GD). In Section 2, it stated that 'modification, abrogation of Articles 35A, 370, unconstitutional delimitation

DOI: 10.4324/9781003196525-7

or trifurcation of the State would be an aggression against the people of Jammu, Kashmir and Ladakh'.[10] This cooperation later turned into a political movement of mainstream Kashmiri parties, People's Alliance for Gupkar Declaration (PAGD), led by Abdullah. It aimed to restore Kashmir's autonomy. On 22 August 2020, Gupkar Declaration II was signed by PAGD. The urge to restore *status quo* of August 4 2019 was confirmed. J&K BJP President Ravinder Raina accused PAGD of anti-national agenda, serving the interests of Pakistan and China.

The political changes which brought the 'new Kashmir' by downgrading J&K to the status of the union territory of Jammu and Kashmir (UTJ&K) provided a justification for augmentation of HR violations, denial of civil liberties and state-imposed dispossession. It was accompanied by unprecedented lockdown (even for Kashmiri already existing standards of systematic restrictions, blockades, digital exclusion, etc.), curfew and shutdowns of phone and internet connections. Indian government's narrative of providing peace and combating terrorism by sending more forces to the already militarised Kashmir evoked suspicion that the major goal was to guarantee the absolute control over the region. Following Article 370 abrogation and the blockade of Kashmir, the pro-government media in India enhanced a narrative which aimed to garner popular support across the country for the BJP-led policy in Kashmir, for example by glorifying the sacrifices of the Indian police forces facing permanent Pakistani threat in Kashmir and their successful struggle with terrorism, which allegedly declined.[11] Some sources referred to Pakistan and its state-sponsored proxies by reporting that the neighbouring arch enemy was willing to 'unleash mayhem' in India and that 270 terrorists were active in the Valley, despite the massive presence of the Indian troops.[12]

The new political map of India depicting the new union territory of Jammu and Kashmir (UTJ&K) as well as union territory of Ladakh (UTL), as established on 31 October 2019, with its cartographical changes in Kashmir, was officially presented by the Indian government on 2 November 2019.[13] The UTL included the territories of Kargil and Leh districts, while all the other districts of the erstwhile State of Jammu and Kashmir fell under the UTJ&K.[14] In accordance with India's territorial claims, the map incorporated the entire PaJK, with GB, AJK and its capital city, Muzaffarabad.[15]

IAS officers Girish Chandra Murmu and R K Mathur were appointed as the Lieutenant Governors (LGs) for the UTs of Jammu and Kashmir and Ladakh, respectively. They were sworn in by the Chief Justice of the J&K High Court at separate functions held in Srinagar and Leh. Both LGs were high-caste Hindus, which strongly resonated among some local HR activists. It was assumed that it would further communalise the situation and alienate not only the Muslim majority in J&K but also the Buddhist community in Ladakh.[16] After G. C. Murmu resigned, Manoj Sinha from Uttar Pradesh was appointed as the next LG of UTJ&K by the President of India and took the oath on 7 August 2020. Selecting an experienced BJP

politician, a very trusted confidante of Narendra Modi to hold this position illustrated the patterns of Modi's strategy to control the situation directly. Both Governors' swearing-in ceremonies were boycotted in the Valley by the mainstream political parties, including Mehbooba Mufti's Jammu and Kashmir Peoples Democratic Party (JKPDP) and Jammu and Kashmir National Conference (JKNC) chaired by Farook Abdullah.

The dominant state-led narratives in pro-government Indian media and institutions, which welcomed the central government's decision, and the policies that followed the partition of the erstwhile State of Jammu and Kashmir, were critically assessed by some experts and analysts. According to A.G. Noorani, a renowned constitutional specialist, the abrogation of Article 370 was 'an illegal decision, akin to committing fraud'.[17] Praveen Donthi mentioned 'barbed-wire barricades and security forces armed to the teeth' and quoted some Kashmiri people outraged and apprehensive of the possible influx of outsiders to the Valley. They claimed that from now on they will experience 'naked occupation', where Kashmir will become a second Palestine.[18] In the Valley in particular, the already existing narratives of Kashmiri identity through the prism of collective victimhood were substantially augmented.

The military lockdown egregiously affected the everyday lives of the region's inhabitants.[19] It was accompanied by the arrests of political leaders (some of them were placed under house arrest), a total communication blackout (people could not even connect and communicate with their families), a curfew and an unprecedented deployment of troops in what was already the world's most militarised zone.[20] Widespread control was imposed by the Indian government on the authors of the material that was published;[21] local reporters were practically silenced, and those who continued their work risked their lives. The region was put under a lockdown and hundreds of Kashmiris were arrested.[22] The streets were covered with razor wire roadblocks to disable peoples' movements. Various multidimensional restrictions suddenly imposed without any explanation, formal order or prior warning in the aftermath of the revocation of Kashmir's (limited) autonomy, had a major impact on people's everyday private lives and professional activities. Children and students had no access to education as schools were closed and those which were re-opened had low attendance of teachers, and of children, due to parents' apprehensions regarding the safety of their children (another proof for the fact that heavy militarisation does not provide security to the civilians contrary to the official narrative). Some public buildings, including schools and health centres, had been occupied by the armed forces, preparing for the complex operation, since July 2019.[23]

The financial and economic stability of Kashmiris was profoundly affected by the blockade. Horticulture, floriculture[24], agriculture, tourism (house boats, hotels, *shikaras*, tour operators etc.), the leather goods production and handicraft industry practically came to a standstill and suffered major losses. Kashmir is famous for its premier quality genuine Pashmina

shawls, hand-knotted silk carpets, wooden and metal crafts with brightly coloured *papier-mâché* techniques. Many Kashmiri artists, embroiderers, carpet waivers and other workers could not sell their crafts outside Kashmir and lost their jobs or experienced major losses, which, in many cases, made them unable to provide basic needs for their families. The state-imposed arrangements affected all commerce, including transport of apples, plums and pears from Kashmir; the fright charges of the companies, which were still operating, were considerably raised. Importantly, the lush apple orchards (located in mostly restive districts such as Baramulla, Pulwama, Shopian, Kulgam, Budgam and Anantnag) are central to local economy in IaJK. The apple industry employs an estimated 3.5 million people in various stages of production and sale,[25] which makes it the essence of Kashmir's economy. The traders were therefore particularly hit as the revocation of Kashmir's autonomy and bifurcation of the state came during the critical harvesting season. The apples, one of the crucial exports good Kashmir is famous for, were wasted and rotten as there was nobody to collect them, or they were stranded in the trucks on the way to the outside markets where most of them are usually consumed; the transport links with outside buyers were cut. Within a few days, their value dropped about 20–30%, as the crop is extremely fragile and perishable.[26] Some shop owners and traders claimed that they were additionally dissuaded by the militant groups from carrying their businesses, including sending apples to the Sopore *mandi* (market).[27] In September 2019, a fruit seller from Sopore was shot at by LeT militants, along with his wife and infant daughter; it further reinforced fear among the traders, who also received warning pamphlets from the *jihādists*. The consequences of the state-imposed restrictions and militants' threats were dismal. The team of professionals who prepared the IR (2019) report visited the famous market in Sopore, the second largest fruit *mandi* in Asia. According to them, it 'bore a deserted look except for armed forces milling around and a handful of trucks'. They learnt from the workers: 'On a normal working day during the apple season, about 350 trucks are filled and carry apples out of the *mandi*. Each truck carried about 1200 crates of apples. The average cost of the apples in each truck is between Rs. 5–6 lakhs (500.000-600.000 Indian rupees, which is around 7.000 dollars) at the very least. The *mandi* has 800 *fuds* (platforms indicating that 800 companies were involved in the purchase and sale of apples). The direct and indirect employment due to the *mandi* is to about 10,000 labourers. After 5.08.2019, the army has put concertina wires all around the *mandi* and fenced it off and scores of armed forces (police and CRPF) are posted at the *mandi*. This has created an intimidating atmosphere due to which farmers and others are scared to come. … We were informed that the direct loss to the apple industry was about Rs. 20 crores (200 million rupees) per day, while the indirect loss is about 50 crores (500 million rupees) per day. Lakhs of farmers and thousands of labourers were suffering from loss of livelihood and earning and this was crippling. Agricultural produce was impounded by the armed forces and sometimes

the payment for purchases were made in kind'. The workers added: *'This is the first time that the industry has taken such a hit and previously during the troubles in 2008, 2010 and 2016 the mandi was working fine'* (italics—AK). [28]

The communication blackout with separation of the Kashmiris from the mainland India and the rest of the world brought anxiety and panic and was a dismal consequence of post-August political dynamics. The internet services were barred (a 175-day internet blockade was among the world's longest internet shutdowns implemented by a democracy), most phone landlines and prepaid/postpaid mobile services were blocked, preventing from people-to-people contacts (via social media), even within the families (information about funerals, planned weddings etc.), and restricting access to the information. It enhanced a sense of fear, anxiety, deprivation and exclusion. The gravity of the situation was exacerbated even more by the unparalleledness in the history of Kashmir long-term militarisation with its degrading surveillance and control realities (the checkpoints, roads barricades and control became part of Kashmiris' lives in the aftermath of the uprising eruption in 1989). Without the internet, the access to essential services attainable via digital technology was blocked; for example, it was impossible to do online banking (and many bank branches outside the centre Srinagar were not functioning[29]), buy air tickets and fix other casual things people globally do online.

The emergency and shutdown in Kashmir were invoked under Section 144 of the Code of Criminal Procedure (CCP-I, enacted in 1973 and came into force on 1 April 1974). This law, which has its roots in the colonial era, was used recurrently by the Narendra Modi government not only in Kashmir but also in other cases, for example to clamp down on nationwide demonstrations against polarising and unconstitutional Hindu supremacist Citizenship Law. Section 144 (similar law exists in Pakistan[30]) empowers an executive magistrate to issue orders in urgent cases of nuisance or apprehended danger, where 'immediate prevention or speedy remedy'(§1) is needed to maintain order. It can refer to an individual or general public gathering in particular place or area. This order is, for example, used to prohibit assembly of five or more persons when unrest is anticipated; in such cases, the assembly becomes unlawful.[31] The emergency under Section 144 cannot be used as an arbitrary exercise of power and supremacy in the name of subjectively defined 'security concerns' or a tool to prevent legitimate expression of opinion or exercise democratically protected rights. The petitioners who challenged the Section 144 orders in the Supreme Court included Congress Rajya Sabha MP Ghulam Nabi Azad and the editor of *The Kashmir Times,* Anuradha Bhasin. They argued that the lockdown 'failed to satisfy the reasonableness and proportionality on the liberties of citizens'.[32] It was confirmed on 10 January 2020 by the Supreme Court, which referred to a shutdown and restrictions imposed in Kashmir since 5 August 2019. The court emphasised the significance of transparency and directed the government to review all the orders which suspended internet

services in Kashmir. In its important judgement, the three-judge bench pointed out that the legitimate freedom of speech and expression or the right to carry out business via the internet is constitutionally guaranteed and cannot be suppressed. In general, the verdict enabled the lawyers and HR activists to challenge the government on constitutionality of the indefinite blockade.[33] The censored (access to 300 'whitelisted' websites, such as banks, educational institutions, some news portals, with no access to social media), slow 2G internet was restored on 24 January 2020. It was not possible to read the news from an independent source or download a document; it affected students' abilities to collect necessary materials for their studies. Those who tried to use proxy connections from other countries, virtual private networks (VPNs—which are used in countries which block the internet, for example China or Iran) to bypass state-imposed firewall and social media ban, were punished. In February 2020, the government intensified the crackdown on social media users; in mid-March, the authorities pledged to restore the high-speed 4G internet, with the declared purpose to keep people at homes during the global coronavirus pandemic. The ban on social media was lifted in March, after 7 months, but the high-speed internet was not available as of the end of 2020.

Severe restrictions on phone lines and people's movement, including ubiquitous roadblocks, and the absence of most of the public transport, including railway and buses,[34] badly affected the access to health institutions and medicines, leading to traumatic situations and even causing death of people with heart problems and other sicknesses, who were left without any help; the medical sector was in a dismal state. Lawyers were prevented from contacting their clients and file *habeas corpus*, and local journalists were subjected to intimidation and barred from reporting on the situation;[35] the readers in India were predominantly unaware of the real results of the lockdown in Kashmir. The state media adhered to the BJP-supported narrative, that in IaJK the 'normalcy' was restored, there are no restrictions and the entire world supports the abrogation of Article 370, as the Minister of Home Affairs Amit Shah announced in September 2019.[36] The government's narrative on the revocation of Kashmir's autonomy was based on the pledge that it would enhance the region's security and economic development, and lead to a successful clampdown on Pakistan-sponsored terrorism.

Another negative aspect of the limited access of Kashmiris to HR institutions refers to the centralisation of the HR problems in IaJK in post-bifurcation era. The State Human Rights Commission (SHRC) was a local HR body established in 1997 for the erstwhile PSJ&K by the then ruling National Conference government under Jammu and Kashmir Protection of Human Rights Act, 1997, enacted by the Jammu and Kashmir State Legislature.[37] As stipulated in Article 3 of the Act, the Commission consisted of a chairperson who was a judge of the High Court, one member who was or had been a district judge and three additional members. It was responsible for investigating the cases of HR violations and producing appropriate

recommendations in cases of enforced disappearances, tortures, extrajudicial executions and other abuses. The residents of the state could relatively easily approach it as it was based in Srinagar (with sub-offices in Doda, Rajouri and Jammu). The Commission was dissolved following the Jammu and Kashmir Reorganisation Act and practically ceased to function on 31 October 2019. Thereafter a legal vacuum was created, and, assuming that the federal government neglected the problem of providing easily accessible legal support in human rights in the newly created UTJ&K, there were rightful apprehensions among the local HR activists that the BJP-led central government might decide that National Human Rights Commission, India (NHRC, a central government agency) should be given the task to deal with HR problems in the former State of Jammu and Kashmir. Regrettably, in March 2020 the government in New Delhi conferred the functions related to human rights in the union territory of Jammu and Kashmir and union territory of Ladakh to the NHRC. That might exacerbate problems for Kashmiris who already experience legal disenfranchisement as it happens that the mainland India lawyers deny providing legal aid to them. The centralisation of HR of the UT inhabitants deprived them of local HR related body which bolstered their legal exclusion and contributed to the deprivation of the constitutionally guaranteed access to justice (stipulated by Article 21 of Indian Constitution). A separate HR institutions dealing with diverse problems in both UTs (Jammu and Kashmir Union Territory Human Rights Commission and Ladakh Union Territory Human Rights Commission) should be established to provide accessible investigation of the complex issues locally.

The outbreak of the Covid-19 pandemic which began in India in early March 2020 brought dismal consequences especially for the already poor and marginalised segments of the society. It gave the administration another pretext to tighten restrictions under Section 144 of CCP-I. A lockdown was introduced (declared overnight without allowing people to get necessary supplies, such as food) few days before the national shutdown announced by Narendra Modi. In UTJ&K, the assembly of three or more persons and any kind of rallies and demonstrations were banned. Barricaded 'red zones', slow internet (only 2G, while the online classes were introduced for students and information/newest research on pandemic was badly needed by professionals), restricted communication and restrictions imposed on health personnel limited access to healthcare and became a serious hindrance in the effective handling the pandemic.[38] Some health care workers experienced direct violence, including beating, at the hand of the armed forces.[39] The pandemic brought a double lockdown, where the problems faced by Kashmiris after August 2019, were additionally exacerbated. The government provided information about the access to the medical services,[40] yet in practice, it was challenging to receive help on time, also due to blockades and internet restrictions, which were regularly reimposed. The virus wreaked havoc in UTJ&K, infecting by the end of 2020 almost

119,000 people and killing 1850 (most deaths in cities of Srinagar: 443 and Jammu: 346).[41]

Some Valley-based Kashmiri Pandits expressed discontent with New Delhi's policies. Sanjay Tickoo, the head of the Srinagar-based Pandit organisation, Kashmiri Pandit Sangharsh Samiti (*Kaśmīrī Paṇḍit Saṅgharṣ Samiti*, KPSS), accused the BJP government of lack of support for over 800 families (the non-migrant Kashmiri Pandits) which reside in the Valley, many of them below poverty line. Their situation deteriorated during the post-bifurcation and pandemic crisis, when many lost their jobs. According to Tickoo, Pandits 'keep Indian ethos alive in the Valley', but the BJP is in fact not interested in improving their situation and security. Moreover, the community is treated as second-class citizens and being viewed with suspicion both by militants and Indian armed forces: 'Indian security forces are surprised to see Kashmiri Pandits living here. "Why you are staying back in the valley? You must be giving shelter to the militants,' [the security forces say]. Meanwhile, militants think we are informants of the state"'.[42] Between 20 and 30 September and 26 November—4 December 2020 the KPSS activists went on a hunger strike, demanding the extension of the PM's Job Package, financial assistance for non-migrant Kashmiri Pandits/Kashmiri Hindus, protection and restoration of their temples and religious institutions.[43]

6.2 The international organisations and states' response

The international reaction to the revocation of Article 370 and bifurcation of J&K was rather limited, but some states, organisations, politicians and academics highlighted the gravity of the situation. On 22 October 2019, during a historic US Congressional Hearing over the HR in Kashmir, the US Congresswoman Ilhan Omar accused the press of being a mouthpiece of the BJP government and criticised a journalist from *The Times of India* for making comments favourable to the Indian government regarding the situation in J&K. Kashmir's experts, scholars and activists, including Nitasha Kaul and Angana Chatterji took part in the hearing as speakers. Both criticised the Indian government for HR violations in Kashmir. Chatterji said, 'They (Kashmiris) said that they felt like they were being caged. They've said that their rights are being revoked… In this instance, when we talk about the BJP government, we also need to understand their ideology. Because their mandate for the first time in India openly to render India into a Hindu state'. Kaul argued that annulment of Article 370 will not improve women's rights in Kashmir, contrary to the official narrative; she highlighted the lack of transparency in the Indian governments' policies and argued that Kashmir is not a communal issue, but an issue which has been communalised.[44]

In October 2019, *The Economist* referred to restrictions imposed by the government, including the mass preventive arrests and pointed out that increasingly politicised India's judiciary system neglected the HR violations in Kashmir and that Indian courts were compliant with the central

government and unwilling to challenge the abrogation of the special status of Jammu and Kashmir.[45]

On 6 December 2019, the Indian-American Congresswoman Pramila Jayapal (Democratic Party) and the Republican Congressman Steve Watkins presented a resolution in the US House of Representatives. They wanted to draw Congress' attention to the HR situation in IaJK. Indian diaspora members, who are largely supportive of the BJP's policy, tried to intimidate her and took a very critical approach against the report and attacked her personally.[46] The proposed resolution urged Modi's government to stop using force against the protesters, preserve religious freedom and lift the existing restrictions on communication and the internet in Jammu and Kashmir. The resolution did not get much support, though. Nayanima Basu quoted an Indian official emphasising the significance of the US-India close relations and saying that the US Congress did not want to 'embarrass' the Indian government. Basu argued that American politicians adhere to India's official stance on Kashmir as an internal matter and therefore political ties discourage them from addressing the issue which is considered sensitive: 'many members of the US Congress, especially those with large Indian-American constituencies, feel "everything about Kashmir, including human rights concerns, is an internal issue that American legislators shouldn't wade into"'.[47]

The United States called on all parties to 'maintain peace and stability along the LoC.[48] The U.S. Department of State in its annual country report confirmed the communications blockade and contended that New Delhi sent thousands of additional security forces before announcing the decision. It mostly blamed the militants for the violence, intimidation and 'terror-related incidents', in which the civilians and armed personnel were killed. It quoted Minister Shah claiming in November 2019, that 'not a single person has died by police firing'.[49] The then New Delhi-Washington alliance of two 'strong' leaders (Modi-Trump), anchored by declarative postulation of shared principles of democracy, human rights and freedoms, in fact legitimised bigotry, nefarious discrimination and hatred towards institutionally and structurally excluded groups. Narendra Modi's September 2019 visit to the United States was crowned with a *Howdy, Modi!'* (How are you, Modi) rally attended by 50,000 in Houston hosted by Indian diaspora, represented by the Hindu nationalist supporters in conservative Texas. Being a devout enthusiast of pompous grandiosity (like Modi), Donald Trump enjoyed festive reception in India in February 2020. He did not wade into India's internal excessively volatile situation, on the contrary, he acknowledged Modi's 'successes' in providing religious freedoms in India. He buttressed India's take on Kashmir conflict (New Delhi regards it as a bilateral issue, in which international community should not interfere), arguing that India and Pakistan 'are going to work it out'. From India's perspective, it was a diplomatic victory and an authorisation of the policy vis-à-vis Kashmir after its bifurcation. At the same time, India-US rapprochement was expected to

enhance bilateral strategic partnership, as both states declared shared security objectives (combating Islamic terrorism). Narendra Modi announced $3-billion arms trade, thus revealing the key objectives of the relations. Both leaders' domestic and foreign policies with increased normalisation of violence and instrumentalisation of internationally recognised norms put at question democratic credentials of the so-called D-2 (India and the United States as the largest and the oldest democracies in the world, respectively), which in these circumstances remained nothing but ideological, empty slogans.[50] The victory of Democrats, Joe Biden and Kamala Harris (of Indian and African descent) as the US vice-president, gave hopes to some (unsurprisingly unfulfilled as of 2021) that apart from geostrategic objectives focused on China's containment, human rights in Kashmir and elsewhere would gain more significance.

The political leadership of the European Union (which regularly declares its dedication to HR, rule of law and democratic values) rather refrained from officially criticising and ostracising India, which is regarded in the West as an important Asian ally, a key pillar of the struggle against radical Islam-related terrorism and the containment policy vis-à-vis China. In October 2019, the delegation of largely ultra-right-wing and Islamophobic MEPs[51] paid a curated visit to the Kashmir Valley to confirm the 'normalcy' in the region. This visit did not succeed in exerting a significant impact on the official narrative of the European Parliament. However, at the end of January 2020, the European Parliament, unwilling to irritate India, postponed voting on draft resolution on India's Citizenship (Amendment) Act, 2019. The proposed document additionally condemned the unilateral changes made to the status of Kashmir by India and criticised the crackdown in Kashmir. Delaying the voting by the EP was tantamount to prioritising political and strategic interests over human rights and was received in India as a diplomatic victory. The EU referred to its traditional stance on Kashmir, urging India and Pakistan to resolve the issue peacefully, with emphasis on the situation of the people living on both sides of the LoC.

The Contact Group of the Organization of Islamic Cooperation (OIC) for Jammu and Kashmir in its Ministerial meetings, held on 25 September 2019 in New York during the 74th UNGA (General Assembly) session[52] and online on 22 June 2020, expressed concern over India's unilateral decision and the worsening human rights and humanitarian situation in IaJK. The 47th session of the Council of Foreign Ministers of the OIC held in Niamey, on 27–28 November 2020, refused Pakistani request to hold a special OIC Contact Group meeting on the situation in IaJK, what was interpreted by India as Pakistan's diplomatic fiasco.[53] The issue of Kashmir conflict was briefly mentioned in the session's final report and Niamey Declaration titled 'United against Terrorism for Peace and Development', with the latter reiterating the OIC's general position for 'a peaceful settlement in accordance with the relevant United Nations Security Council resolutions'. The OIC

only included a resolution on J&K among 72 documents in the Resolution on Political Affairs, where basically all issues indicated by the member states were addressed.[54]

At the international level, the situation in Kashmir was again overshadowed by multidimensional security challenges which dominated political discourse, captured press coverage and caught the attention of international public opinion: the crisis in the Middle East (sharp escalation of the US-Iran relations), the Brexit, the US presidential elections and a global SARS-Cov-2 pandemic, which forced the governments across the globe to focus primarily on its containment.

6.3 Non-governmental organisations' response

The lockdown, curfews and censorship made it difficult to assess the situation on the ground with reference to HR violations and prepare a detailed analysis. The government and pro-government media went to great lengths to convince the Indian and international public that everything was normal in Kashmir and that all reforms were introduced for the wellbeing of the Kashmiri people. In such circumstances with severely restricted access to the information and the necessity of collect facts in the state of emergency, it is extremely difficult to provide full assessment; therefore, the data published in various reports presented later tend to differ (but not drastically). Notwithstanding all these limitations, towards the end of 2019, the first reports referring to the on-the-spot situation were published. First, a fact-finding mission managed to visit the Valley; the 11-member team included advocates, trade unionists and HR activists and a psychiatrist, who came from New Delhi, Goa, Bengaluru and Mumbai.[55] They carried out their research, which included interviews with Kashmiri residents, local police, social workers, traders, doctors and lawyers (including the J&K High Court Chief Justice, District Courts) during the period 28 September–4 October 2019. The broad objective of the mission was to understand the situation persisting in the two months since the abrogation of Article 370 and to assess the quality of access to justice in these compelling circumstances. As a result of their fieldwork, a detailed report (IR report, *vide supra* §3.4) covers the multidimensional impact of the post-5th August political dynamics on the lives of ordinary Kashmiris. Second, local NGOs managed to provide some information: in early December 2019, the APDP launched a report on the situation in the Valley, titled '120 Days. 5 August to 5 December'.[56] Third, on 31 December 2019, the Annual Human Rights Review covering the situation from 1 January till 31 December 2019 was released by the APDP and JKCCS.[57]

According to the IR (2019) report, people were arrested without any documentation but the practice of not documenting arrests or not registering cases by the police became common, albeit not new. The police were unchangeably reluctant to register FIRs (First Information Reports) against the detainees throughout the insurgency in Kashmir, and no FIR

gave no proof that the person was killed, for people who disappeared after 1989. The document corroborated that 'there is a complete lack of documentation and people can't file bail applications even for children as there is no FIR. People are unable to access the law'.[58] The same procedure was prevalent regarding house arrests and detentions, with an unprecedented situation where people were pre-emptively detained without any written order but merely under the verbal orders of the Union Home Department. The courts were dismissing petitions to challenge detentions and house arrests because they claimed there was no documentation to prove that particular people were arrested.[59] 'There are countless detentions that are unlawful,[60] hence no one except the State knows how many persons are illegally detained. They (Kashmir residents) said there are reports that more than 13,000 people have been unlawfully detained. The family members of those who are detained unlawfully are apprehensive that if they complain about the detention or were to approach the courts for *habeas corpus* or any other relief, then as a counter, JKPSA would be slapped and it would become impossible to get them released. They were sharing experiences of paralysing fear, acute anxiety, panic attacks, depressive and dissociative symptoms, post-traumatic symptoms, suicidal tendencies and severe anger outbursts…. There is a marked increase in psychological distress in 70% (as estimated through a recent survey) of the population'.[61] The arrests included prominent members of intellectual elites. According to the document, at least 30 lawyers who raised their voices, including Mohammed Ashraf Butt, the J&K Bar Association's general secretary, may have been arrested across Kashmir, but there was no confirmation due to the communication blockade and lack of transparency: there was no list available of persons arrested around August 5.[62] The report offered recommendations with regard to HR in Kashmir, which included 'repealing the JKPSA and the AFSPA, withdrawing all army and paramilitary forces from civilian areas of J&K, opening a transparent unconditional dialogue with the J&K inhabitants'.[63]

The APDP report corroborated previous assessments that August 2019 changed the political and power discourse in Kashmir; it highlighted the detentions of local politicians and pointed out that the police had treated children as adults and detained them accordingly, using the JKPSA, even though the legislation categorically forbids the detention of children. Nonetheless, children as young as 9 years old had been detained and it was added that 'the State Police itself has admitted to detaining 144 children since August 5, but also claims that most of them were released on the same day'.[64] Due to the fact that children are detained as adults, the number cited by the police could not be independently verified.

The APDP and JKCCS's 100-page annual HR review in its annexure meticulously enumerated 635 people arrested under the JKPSA in 2019; in most cases, the detention date was after 5 August.[65] The document mentioned dismal situation and highlighted 'the legal impunity of the armed

forces, self-imposed limitations of the judges, etc., which purposely makes the access to justice severely limited as people are disillusioned and reluctant to approach the courts'.[66] The document highlighted the attacks on non-local workers, which escalated to an unprecedented level: 'this was, perhaps for the first time, that in one year over ten non-locals were killed in violence in Kashmir'. According to the report, '14 non-local workers, who were mostly drivers, were killed by unidentified gunmen. Among the 13 killings–11 were shot dead, two killed in grenade explosions and one person died in cross firing'.[67] The report also touched upon the situation of the Kashmiri students in various universities and colleges across India (approximately 30,000), who were unable to get in touch with their families in the Valley, which caused lot of distress as some students were cut off the financial support. The J&K authorities enabled the families to call them, but, again, it was done in humiliating way: 'People had to wait for hours in queues to access the phones set up in government offices, only short calls were allowed, and the conversations were monitored'.[68] A year after abrogating Article 370, the JKCC referred to a communication blackout as 'collective punishment' and 'digital apartheid'. Kashmiris are accustomed to such curfews, blockades and preventive detentions, the report accentuated, 'yet this time due to exponentially harsh measures, widespread panic was evoked'.[69]

The details regarding the post-August 5 killings were provided by APDP&JKCCS: 69 people were killed, including 33 civilians, 20 militants and 16 members of the armed forces.[70] As of mid-2020, the biannual report informed about at least 229 killings in different incidents of violence between January and June 2020, which included 32 civilians and 54 armed forces personnel. Additionally, during at least 107 Cordon and Search Operations (CASOs) and Cordon and Destroy Operations (CADOs) 143 militants were killed; destruction of civilian properties during these operations and 57 encounters between the armed forces and the militants were reported.[71]

The reaction of international NGOs was also blunt. HRW in multiple publications reported about intensified repressions which questioned India's declared intentions for Kashmir's bifurcation to 'deliver social and economic justice'.[72] The HRW 2020 World Report confirmed additional deployment of armed forces in Kashmir and the abuses which were reported by local activists, such as mass arrests without charge and detentions of former chief ministers, political leaders, opposition activists, lawyers and journalists. The authors argued that 'the Indian government blocked opposition politicians, foreign diplomats, and international journalists from *independent* (italics—AK) visits to Kashmir',[73] thus highlighting that the selectively chosen right-wing EU MP's visit to the Valley could not be viewed as independent, but rather as politically arranged by the Indian authorities.

The AI launched the campaign 'Let Kashmir Speak', stressing that, since 5 August 2019, almost 8 million people experienced a government-imposed telecommunications blackout, which restricted their freedoms 'by shutting

down their ability to communicate with each other and the rest of the world, and by imposing curfews or curfew like situations preventing people from leaving their homes'.[74] Minority Rights Group in its 2020 *South Asia State of Minorities Report* alerted about 'abrupt and unilateral' revocation of Article 370 and erased civic space in Kashmir, foreseeing grim prospects for India's democracy as Narendra Modi's government irrevocably adopted hard-line Hindutva.[75]

The CIVICUS Monitor National Civic Space, assessing civic freedoms, ranked India as 'repressed' country (in 2014, it was 'obstructed'), highlighting that communications blockade restricted access to the information from IaJK.[76] In 2020, the *Freedom in the World* report (launched annually by Freedom House, FH), ranked India among the least free democracies, highlighting an alarming decline in political rights and civil liberties of its citizens. Significantly, IaJK status was downgraded from 'partly free' to 'not free', which meant its freedoms were practically non-existent, just like in Pakistani-administered Kashmir, which had always been ranked 'not-free'.[77] The report enumerated the reasons for the decline, for instance the revocation of its special status, arbitrary arrests, suspension of political activities, liquidation of competitive multiparty system and freedom of assembly and shutdown of mobile and internet services—the longest ever imposed by a democracy.[78] Both regions were negatively assessed with regard to political rights and civil liberties; altogether out of maximum 100 points, they both received only 28 (a huge downfall for IaJK, following its bifurcation, the status of PaJK remains the same in the last few years). As Table 6.1 shows, for the first time in the history, the IaJK and PaJK were equalled in terms of lack of freedom; in the 2021 FH's report, the IaJK's situation was assessed even worse than on Pakistani side, particularly in terms of political rights, and its overall score was only 27, a huge downfall in comparison to pre-bifurcation time.

Markedly, degradation of IaJK's status was followed by a critical assessment of India's democracy a year later. In 2021, Freedom House downgraded India's status from 'free' to a 'partly free',[79] which served as another

Table 6.1 Indian and Pakistani-administered Kashmir 2019–2021: Freedom House Report

	2019			*2020*			*2021*		
	PR	*CL*	*Status and score*	*PR*	*CL*	*Status and score*	*PR*	*CL*	*Status and score*
IaJK	22/40	27/60	**49/100 partly free**	8/40	20/60	**28/100 not free**	7/40	20/60	**27/100 not free**
PaJK	9/40	19/60	**28/100 not free**	9/40	19/60	**28/100 not free**	9/40	19/60	**28/100 not free**

Notes: PR = political rights, CL = civil liberties.
Source: Data compiled from FH AJK (2021), FH JK (2021).

indication that democratic downfall in 'the largest democracy in the world' was given more international attention, recognition and apprehension.

6.4 Demographic change, land control and hydel potential[80]

Equitable, corruption-free and development-oriented management and distribution of regional resources with fair inclusion of indigenous inhabitants remain a fundamental challenge, which exerts a strong influence on the human rights situation in Kashmir and New Delhi's interactions with the region. Demographic engineering, land control and managing the hydel potential are interconnected and have common denominator: resource control. Managing resources in IaJK is typically accompanied by the centre's narrative of providing economic progress to Kashmiris, irrespective of which party is in power. In his speech in 2016, Narendra Modi declared to achieve peace and unity in Kashmir by providing *vikas* (*vikās*, development) and enhancing *vishwas* (*viśvās*, confidence). Following the establishment of the UTJ&K, Narendra Modi promised economic growth of the region, claiming that Article 370 was a hurdle for development.

The political and legal scaffolding for the policy in Kashmir is overwhelmingly viewed as oppressive in the Valley, but in Jammu and Ladakh the situation is markedly different and the BJP has some strongholds there. Kashmiris' apprehensions of being disenfranchised via demographic changes increased when the autonomy was erased along with the laws implemented *inter alia* by Delhi Agreement of 1952[81] and Article 35A. They guaranteed the rights of J&K assembly to define its citizens (referred to as 'state subjects' or 'permanent residents') and safeguarded their privileges, including property rights, government jobs and scholarships and banned outsiders from purchasing immovable properties. Anticipating the major departures from legal safeguards stipulated by Article 35A, in August 2019, Syed Ali Geelani accused Indian authorities of being 'drunk on power and arrogance' and forcing demographic change by implementing settlers' colonies in Kashmir.[82] The ailing, 90-year old staunch anti-India leader, one of the founding members and former head of the All Parties Hurriyat Conference[83] (a conglomerate of separatist parties), in a bid to urge the residents of the Valley to protect their interests, announced in December 2019 a ten-point programme, where he advised Kashmiris not to sell any property, including land, houses and shops, to any outsider or a non-state subject.

In 2020, the centre-authorised legislature expanded the number of people eligible to reside in Kashmir. The orders issued by the Ministry of Home Affairs, followed by the amended Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules 2020 issued on 18 May 2020[84], replaced the term 'permanent residents' with 'domiciles of UT of J&K'. The notification determined the conditions to obtain the documents required to apply for jobs and gain other privileges restricted to residents in Jammu and Kashmir and was implemented with the centre-supported narrative 'to give equality and

dignity to all'. It put emphasis on fastening the procedure of issuing certificates: in case of delay beyond 7 days, penalty of Rs 50,000 would be taken from the responsible officer's salary. The new regulations, not consulted with UTJ&K's local parties, were critically received by them as an attempt to disempower Kashmiris and as a manifestation of the Hindu nationalists' campaign aimed to neutralise Kashmiri Muslims *via* the outside settlement, which started in the 1950s. Under certain provisions, the migrants were authorised to apply for a job in UTJ&K and allowed to acquire status equal to Kashmiris. The law is applicable to those who meet the new conditions of domicile: anyone who lived in J&K for 15 years, officials from the central government, research institutes etc., Indian armed forces personnel and their children (even if they have never visited Kashmir), those who studied for seven years and appeared in Class 10 or Class 12 exams in an educational institution, located in J&K. As of July 2020, thanks to this fast-track procedure, thousands of applicants, including retired Gorhka officers and soldiers (viewed by some indigenous Kashmiris as occupiers), living in IaJK for generations, received domicile certificates in UTJ&K.[85] This community saw it as a chance to end long-lasting social and economic exclusion by providing opportunities to find employment. At the same time, there were apprehensions among the Kashmiris that New Delhi's policies may legally dispossess, make stateless and deprive of government jobs those native Kashmiris who would not be able to prove their residency and get a domicile certificate; such situation could provide legal facilitation for demographic engineering. Getting Kashmiri residency was received positively as a chance for equal rights and better life by lower caste Hindus from Jammu, who had been brought to Kashmir in the 1950s from Punjab to perform sanitation works, etc. Other Hindus were often apprehensive of losing their position or jobs to the outsiders. In Ladakh, the domicile laws were not introduced, which raised accusations of some Valley Kashmiris that there are different standards of the centre's policy towards UTJ&K and UTL.

The land control and natural resources exploitation are the processes which occur simultaneously in Kashmir. As manifestations of self-assertive authoritarianism of key stakeholders, they have a detrimental impact on the already socio-politically dispossessed communities. The Gujjars and Bakerwals, IaJK's largest Adivasi communities, became pawns in the land control struggle. For generations these groups, most of them nomads, semi-nomads, pastoralists, shepherds and goatherds, have been living on forest land, traversing yearly to the pastures. They were promised empowerment by the BJP, in an attempt to earn their political support during the election campaign. Following the deprivation of Kashmir's autonomy, on 16 August 2019, the BJP organised a celebration in Jammu, where some representatives of the nomads declared before the media their support for Narendra Modi's policy, claiming that Article 370 abrogation will empower them.[86] The rights of these communities to forest dwellings (previously they were regarded as encroachers) and reimbursement in the case of displacement are stipulated

in India by the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, also called Forest Rights Act.[87] Conspicuously, the FRA was not extended to the erstwhile state of J&K, because the BJP claimed that J&K's partial autonomy granted under Article 370 safeguarded the nomads' rights and there was no need to implement central laws (a noteworthy exemption from BJP's policy aiming to abrogate Kashmir's special status). The FRA became applicable in UTJ&K on 21 October 2019, following the bifurcation, yet it was not implemented. A year later the forest dwellers of Gujjar and Bakerwal communities were not provided the expected benefits, but under the pretext of 'illegal occupation of the land', in October/November 2020 the steps were taken by local authorities and police to forcefully evict some of them. In Anantnag or Budgam district, some of their houses were damaged and thousands of walnut and apple trees were chopped off.

The land control campaign prompted some BJP politicians, followed by state-supporting media to begin the 'land *jihād*' campaign. They accused Muslims of encroaching the Hindu majority regions in Jammu to change its demography. To bolster communal character of these claims, the BJP intentionally used the term '*jihād*', associated with Islamic terrorism and domestically projected by the far-right-led discourse as symbol of Muslim radicalism, anti-India approach, intentional seducing of Hindu women to convert them to Islam ('love *jihād*'), etc. The legal basis for transferring ownership of state land to its occupants for a fee defined by the government was the J&K State Land (Vesting of Ownership to the Occupants) Act, 2001, referred to as Roshni ('light' in Hindi) Act, as the income was to finance power projects in J&K. It was adopted by J&K government in 2001 (with Farook Abdullah as the then Chief Minister), and according to the BJP accusations, prominent local businessmen, police officers and politicians were favoured to grab the land. On 9 October 2020, the Roshni Act was judged unconstitutional by J&K High Court. The lists of purported land encroachers published thereafter by the Jammu administration refuted the 'land *jihād* ' theory as it turned out that the majority of the Act's beneficiaries in Jammu were non-Muslims. It also included poor families, who feared becoming landless.[88]

As some indigenous inhabitants of IaJK faced deprivation and were forced to struggle for their rights, the privileges of retired armed forces personnel were upgraded by establishing Sainik colonies for them and their families in J&K. Already in April 2015, the Rajya Sainik Board (RSB), headed by the then Governor N.N Vohra, tried to set up such colony in Srinagar. It was ideologically spelled out by the BJP politician Tarun Vijay, as a promotion of Hindu nationalism, 'planting saffron' in the Valley, with the aim to provide 'fragrance of Indianess and principal mainstream of patriotic India'.[89] Due to the opposition of the local parties and separatists, setting up Sainik colonies did not succeed in the Valley at that time. However, in 2020, it was much easier to introduce the BJP's plans in the Valley part of the UT: the land for the first such settlement was allotted in Budgam district. Three

colonies already exist in Jammu, two for ex-servicemen and one for the widows and families of the deceased armed forces personnel.[90]

Ensuring energy generation constitutes another vital problem in Kashmir. The erstwhile PSJ&K is abundant with water of the Indus water system; its hydropower resources and potential constitute a foremost asset, and strategically essential element of Indo-Pakistani animosity. Both rival neighbours managed to sign a river-dividing Indus Waters Treaty (1960), brokered by the World Bank.[91] It achieved some success and managed to survive for a few decades, yet due to profound mutual distrust and growing challenges of climate change, water scarcity, etc., no legal and institutional frameworks were established to introduce a cooperative and integrated management of Indus River basin.[92] The construction of dams for hydropower generation on transboundary rivers by both states in the disputed areas continuously intensifies bilateral antagonisms. Most importantly, it affects many villages and submerges agricultural land. In 2006, India strongly protested against Pakistan's plan to construct the Diamer-Bhasha Dam on the Indus River, partly in GB (Gilgit-Baltistan, a chunk of PaJK). New Delhi's historically motivated stance assuming GB to be an integral part of India was among the core reasons for such a firm response.[93]

Water exploitation is also a fundamental element of resource management within the IaJK and a problem which deserves a separate, thorough study. In short, according to the Central Electricity Authority (CEA, functioning within India's Ministry of Power), Indus basin serving India's northern region, including J&K, has a hydel potential second only to that of the Brahmaputra. Within the region, of which 45% capacity is yet to be developed, the biggest potential belongs to the former state of J&K.[94] Kashmir is largely dependent for electricity on hydroelectric (hydel) power plants on its rivers. In 2018, the CEA assessed that J&K has a potential to produce 16,475 megawatts of hydropower,[95] yet, it produces only about 2,439. Notably, much of this power is generated by plants run by the National Hydroelectric Power Corporation, which transmits most of it outside J&K, leaving the state with frequent power cuts[96] and people disenchanted by the centre's policies. Moreover, when the rivers in the Valley dry up in the winter, the region has to supply power to meet its requirements. The demand in Kashmir grows exponentially during snowy, cold winters. Each year the problem recurs; power outages in IaJK, which sometimes last for many hours, are immensely frustrating for business community, students and common people. They particularly affected Kashmiris (especially in rural areas) who suffered in many ways in 2020 during the double lockdown triggered by post-bifurcation restrictions and the Covid-19 pandemic, as the families were forced to squeeze indoors to share electricity, which further enhanced virus transmission.[97] None of the Indian governments has fulfilled the pledge to provide unrestricted access to electricity in the region. After the bifurcation of Kashmir, the authorities promised to boost electricity to 'generate goodwill' in UTJ&K.[98] Addressing the power generation

problem equitably and effectively could provide a stimulus for economic development and improve people's perception of New Delhi's policies.

Notes

1. CAJKO 2019.
2. CO 273.
3. Ghosh (2019).
4. JKRA (2019).
5. IR (2019: 5).
6. More on 2019 IaJK bifurcation: Balcerowicz–Kuszewska (2022b).
7. IR (2019: 5).
8. Conversation with a New Delhi-based Kashmiri HR activist.
9. Veteran politician and former Chief Minister of J&K; he is the son of Sheikh Abdullah and the father of Omar.
10. GD (2019).
11. IT (2019-09-17).
12. Zeenews (2019-09-19).
13. All maps available here: MHA (2019).
14. Quint (2019-11-02).
15. As part of a 'map war', Pakistan presented its own version. In September 2020, India's National Security Advisor, Ajit Doval, left a virtual meeting of the Shanghai Cooperation Organisation after seeing a map with IaJK depicted as part of Pakistan, hung behind Pakistani delegation.
16. JLN (2019-10-30).
17. BBC (2019-08-06).
18. Donthi (2019).
19. APDP (2019b: 3).
20. Dhar (2019).
21. MRG (2020: 108).
22. Kaul (2019). As per data from March 2020, 450 people from J&K were still in preventive detention in various jails across India under JKPSA. However, with growing concern of the Covid-19 pandemic and due to calls from humanitarian and civil society groups, a gradual increase in release of prisoners started in March 2020 (APDP&JKCCS, 2020: 11).
23. IR (2019: 22).
24. Kashmiri saffron (the world's most expensive spice), grown mostly in Pampore, dubbed 'saffron town', is regarded as one of the best in the world.
25. Krar–Sally (2019).
26. Krar–Sally (2019).
27. Ghoshal–Bukhari (2019).
28. IR (2019: 22–23).
29. IR (2019: 22).
30. CCP-P.
31. CCP-I.
32. *Firstpost* (2020-01-11).
33. *Firstpost* (2020-01-11).
34. The city bus in Srinagar was suspended, so were the connections to other towns; there was no regular bus within or outside Kashmir, apart from a very limited number of private buses. Out of 30 regular buses from Srinagar to Jammu, only 1 night bus remained. This made travel barely possible and very expensive as the prices skyrocketed. IR (2019: 19).
35. APDP (2019b: 80).

36. ToI (2019-09-29).
37. JKPHRA (1997).
38. APDP&JKCCS (2020: 18–22).
39. Lateef (2020).
40. GJ&K (2020).
41. MHFW (2020), DIPR UTJ&K (2020).
42. Shahid (2020). Also: conversation with Sanjay Tickoo, Srinagar 2014.
43. Full list of demands: CJP (2020).
44. Kaul, Nitasha (2019-10-22).
45. *Economist* (2019-10-05).
46. The India Defence Research Wing referred to a pro-BJP narrative, suggesting she took up this issue as part of political campaign 'against her country of origin to attract greater applause from the left liberal community'. Pramila Jayapal was also accused of invoking outrage among the Indian diaspora in the U.S. IDRW (2019).
47. Basu (2020).
48. Lunn (2019b).
49. U.S. Department of State (2019: 10–11).
50. On a broader level, these seemingly paradoxical relationships among supremacist, right-wing leaders who claim their adherence to democracy, but base their discourse on accentuating nationalism and disenfranchising significant sections of the societies, are particularly dangerous phenomena. These alleged bonds are based *de facto* on narcissistic and aggressive understanding of leadership, that is deeply valueless, and serves mostly short-term interests of narrow groups of power in the respective states. They provide normalisation and legitimisation of disenfranchisement and dehumanisation of selected groups on the basis of their race, religion, ethnicity, etc. If this process continues, it may bolster global de-valuation of the HR norms, which were recognised and developed as part of the post-World War II international order.
51. Including the MEPs from the Alternative for Germany (AfD) party and from Marine Le Pen's National Rally in France and other far-right parties *inter alia* from Poland (for example Polish lawmaker Ryszard Czarnecki from the ruling nationalist Law and Justice Party, who had been removed from the position of the European Parliament vice president in 2018 for using unacceptable insult with Nazi connotations against another MEP), the UK, Italy.
52. OIC (2019).
53. On Pakistan's international strategy vis-à-vis India and IaJK: Balcerowicz–Kuszewska (2022a §2).
54. All documents: OIC (2020).
55. Full list of the team's members: IR (2019: 5).
56. APDP (2019b).
57. APDP&JKCCS (2019c).
58. See also: Vincent (2019).
59. A discussion with a HR activist from Kashmir, name withheld. New Delhi, September 2019.
60. It was corroborated by private discussions with the people from Kashmir (who managed to leave Kashmir) in early 2020. Names withheld at their request.
61. IR (2019)
62. IR (2019: 60).
63. IR (2019: 73).
64. APDP (2019b: 16).
65. APDP&JKCCS (2019c: 75–100).
66. APDP&JKCCS (2019c: 71).
67. APDP&JKCCS (2019c: 67).

68. APDP&JKCCS (2019c: 61).
69. JKCCS (2020). In October 2020, the JKCCS's office and some its members' homes were inspected by NIA, claiming that they were using charitable funds to carry out 'secessionist and separatist' activities. Some hard-copy archives of Kashmir-related articles were confiscated.
70. APDP&JKCCS (2019c: 57). Their 6-month report published before abrogation in July 2019 highlighted the year 2018 as the deadliest in the last decade with 586 killings, but the violence continued at the same pace in 2019 with 271 killings, which included 43 civilians, 120 militants and 108 Indian armed forces personnel. APDP&JKCCS (2019b: 2).
71. APDP&JKCCS (2020: 5).
72. See Asia Advocacy Director, John Sifton (2019), and his written submission to the US Congress HR Commission, published by HRW.
73. HRW (2020: 267–268).
74. AI (2019c).
75. MRG (2020: 106–113).
76. CIVICUS (2020), MRG (2020:73).
77. FH AJK (2020).
78. FH JK (2020).
79. Downgrading India was justified by 'multiyear pattern in which the Hindu nationalist government and its allies have presided over rising violence and discriminatory policies affecting the Muslim population and pursued a crackdown on expressions of dissent by the media, academics, civil society groups, and protesters'. FH (2021).
80. The current and historical resource management in IaJK deserves a separate, in-depth study, which goes beyond the research objectives of this chapter. Therefore, it is concisely touched upon to accentuate the significance of these issues as noteworthy factors of socio-political and economic development, correlated with protection of indigenous communities' rights.
81. Under §2 of this agreement between Indian and Kashmiri governments, the state legislature was empowered to make laws to provide special rights and privileges for the 'state subjects'.
82. Kashmiriat (2019-08-25).
83. In June 2020, he resigned from his faction of the APHC. By his opponents Geelani has been accused of fuelling radicalisation among the young Kashmiri Muslims and inciting them to militancy.
84. See JKGDCPR.
85. Dua (2020) Known for their bravery and discipline, Gorkhas were first invited to PSJ&K from Nepal by Dogra rulers after 1846.
86. Sharma (2020).
87. FRA (2006).
88. Zargar (2020).
89. Irfan (2016).
90. Javaid (2020a).
91. India was granted the rights to use three eastern rivers of the system: Ravi, Beas and Sutlej, and Pakistan—western rivers: Jhelum, Chenab and Indus.
92. More on Indo-Pakistani hydropower rivalry: Wirsing–Stoll–Jasparro (2013: 80–100), Batra (2013: 78–79).
93. Mahapatra–Shekhawat (2008: 177).
94. CEA (2018: 12–18).
95. ET (2018-01-10).
96. Naqash (2018).
97. Ashiq (2020).
98. Ashiq (2019).

7 Beyond the Valley

Agnieszka Kuszewska

7.1 Some narratives from Jammu and Ladakh

Being the major conflict flashpoint and the core centre of insurgency, the Valley and its relations with the Indian state[1] and Pakistan have dominated the international discourse, academic debates and media coverage of socio-political dynamics, human rights abuses, and communal challenges, in the disputed region. Former PSJ&K's multidimensional ramifications go much beyond the perception of India-Pakistan nationalist, religiously motivated rivalry or communal fault lines of Hindu-majority India versus Kashmiri Sunnī Muslims from the Valley. Importantly, the polarising policies are historically inherited and have their origins in the artificially crafted PSJ&K, set up in 1846 in the aftermath of the Amritsar Treaty. Ladakh was an independent kingdom until the 1834 invasion of the army of Gulab Singh (the first of Dogra dynasty in Kashmir, who opportunistically provided his services to the British during the war with Sikhs, was a Rajput from Jammu). The imposition of the Dogra dynasty in Kashmir Valley through the colonial machination was a negative change for Kashmiris with new arrangements being made from Jammu without their consent.[2] Under the sectarian Hindu Dogra regime with British paramountcy, autocratic, divisive patterns of exerting power were introduced and institutionalised.

The lack of leadership willing to promote a policy based on legitimate representation of different religious and ethnic groups contributed to the fact that pluralist, equality-based system never developed either in erstwhile PSJ&K or in the post-1947 territories which comprise IaJK. In the era of Nehru-advocated democratic, secular state-building efforts in independent India, Kashmir did not experience participatory democracy or constitutionally guaranteed mechanisms ensuring genuine political rights, due to various exogenous and endogenous reasons, which *inter alia* include the centre's policies and Sheikh Abdullah's power ambitions focused on the Valley. Sheikh Abdullah (the leader of Kashmiri political party National Conference) is often blamed for majoritarian approach which intensified disenfranchisement of Jammuites and Ladakhis.[3] He refused to share state power in 1975 (following the agreement with Indira Gandhi, Sheikh came back to

DOI: 10.4324/9781003196525-8

power that year) with constituent regions and pursued the will to empower the majority community—Kashmiris—at the cost of the minorities in Jammu and Ladakh. Navnita Chadha Behera argued: 'Sheikh never fulfilled commitments of creating federal structures and reorganizing the constitutional set-up of the state, nor was he willing to share political power by accepting demands for regional autonomy. … All office-bearers of the National Conference came from the Valley. One minister of state represented Jammu in the cabinet. Kashmir Valley had continued to be Sheikh Abdullah's primary constituency, and, deprived of their due share in state power, Jammu and Ladakh started asserting their regional identities. The political forces in the state were, once again, divided along regional lines'.[4] Apparently, Sheikh Abdullah was a leader, whose political actions are open to discussion. For instance, he selectively adhered to diverse agendas and made frequent political U-turns: while he organised a mass movement against the autocratic and feudal rule and became a vociferous proponent of civil rights, he also showed autocratic and intolerant approach towards those whom he regarded as rivals.[5]

The narratives from Ladakh[6] and Jammu (and polarities between their subregions), which were since the late 1980s overshadowed by the restiveness of the Valley, should be studied against the backdrop of sociopolitical fluctuations, local heterogeneity, communalised politics with exacerbated conjunction of religious affinities, to provide a more comprehensive depiction of historically determined antagonisms and popular resentments. The supposition of being disenfranchised has to be looked upon in the context of ethnic, religious minority-majority interactions in India and within J&K itself. For example, some Kashmiri Muslims consider themselves a threatened minority vis-à-vis Hindu majority India, Kashmiri Pandits feel marginalised vis-à-vis Kashmiri Muslims, Muslims in Jammu consider themselves overwhelmed by the majority of Hindus of Jammu, Ladakhi Muslims are apprehensive of being dominated by Buddhists, etc.[7]

Importantly, there are diverse narratives regarding the future of Kashmir within Kashmir—some of its residents demand independence, others seek to join Pakistan, others want to reconcile their differences with India and to safeguard their political rights through transparent, democratic mechanisms. In the former J&K, Kashmiri political leadership, as Behera appositely argued, did not provide the ground to represent the interests of diverse groups, such as Kashmiri Pandits, Dogras, Ladakhi Buddhists or nomadic, linguistically and religiously diverse (albeit with Muslim majority) Adivasi communities of Gujjars or Bakerwals.[8] These groups do not share the Kashmiri Muslims' interpretation of the right to self-determination or the plebiscite mandated by the UN resolutions. The internal ethnic identities within IaJK are exceptionally complex. For example, neither the Hindus nor the Muslims form a homogeneous category and are internally diverse along political, linguistic and cultural lines. The Dogra Muslims from the Dogra belt of Jammu to a large extent share their cultural identity with

the Dogra Hindus[9]; the Muslims of the Doda belt are mainly Kashmiri speaking and culturally closer to Kashmiri Muslims etc.[10] The differences between Punjabi-speaking traditional Sunnī Muslims of Jammu (who constitute an important minority there) and Kashmiri speaking Muslims of the Valley were politically manifested already in the 1940s and led to the development of diverse popular discourses of social and economic inequities, connected with territorial affiliation and mobilisation. In Jammu, which is religiously, culturally, ethnically, most diverse chunk of IaJK, all political parties, irrespective of their ideological leanings, acknowledged the rivalry between regional Jammu identity and Kashmir identity and were united in their claims to achieve political parity with Kashmir.[11]

Mostly pro-India residents of Jammu or Ladakh did not advocate the militancy and uprising in the Valley,[12] and consequently, they did not associate themselves with Kashmiri Muslims' struggle. Nonetheless, at the time when the insurgency in the Valley commenced, other political trajectories, grievances and communal fault lines within the IaJK were simultaneously resurfacing. In August 1989, the already existing Buddhist-Muslim communal dissent in Ladakh escalated into a violent agitation and the Ladakh Buddhist Association (LBA[13]) demanded separate constitutional status as union territory.[14] Maintaining that they remain under 'imperialist' control of the Valley, they vehemently protested against Kashmiri Muslims dominated administration and economy, political exclusion of Ladakhi representatives (of the state's 2900 government employees, only 2 were Ladakhis[15]), and unfair distribution of resources by the then Farooq Abdullah's power-sharing government (with the Congress Party), which overwhelmingly prioritised the Valley. The LBA, which had been engaged in campaigns for autonomy for decades, with the aim of preserving Buddhist culture, incited boycott of Kashmiri traders and administration; their officials were forced to leave some cities, such as Leh or Zanskar. The hostilities were also extended to Ladakhi Muslims (Leh district of Ladakh is overwhelmingly Buddhist with Sunnī Muslims being an important minority, and Kargil district is 80% Muslim, mainly Shīʿa), which affected villages with mixed population,[16] ruining the previous relative communal harmony. 'For the next three years, the Buddhists avoided Muslim-populated areas and did not enter hotels, restaurants, or shops run by Muslims. Farmers were prohibited from exchanging tools. No interreligious marriages were allowed, and meetings among relatives of different faiths were stopped'.[17] Such attitudes can be accounted till today, leading to the sense of disenfranchisement of some Muslim minority members in Ladakh. The LBA became the key platform for Ladakhi Buddhists to manifest and prioritise their cultural distinctiveness and identity.

The insurgency in the Valley adversely affected the engagement in the political process. In the local elections in 1996, in Jammu, the turnout was 60%, in the Valley only 10%, as insurgents called for a boycott[18] and many people feared to vote. The militancy in the Valley had profound

impact on Jammu (the influx of Kashmiri Pandits). It is worth to mention that many Kashmiris in the Valley do not trust the governmental institutions, and some of them exclude themselves from the electoral process, primarily because they do not believe in fair elections. Low turnouts are also caused by the fear of retribution at the hands of the militants for participation in the voting process. During the Lok Sabha elections in May 2019, 97% of Kashmiris from the southern part, with extensive militant activities, did not vote. Pulwama witnessed the lowest turnout with the total 0.64%.[19] The 2020 local elections proved that the majority of UTJ&K residents want to participate in electoral democracy, which they regard as a method to show disapproval or support (as in case of Hindu-majority districts of Jammu) for the centre's policy.

Largely pro-India approach in Ladakh and Jammu is a historically inherited phenomenon, which was illustrated in a landmark survey conducted in IaJK and PaJK in 2009 by Robert Bradnock (2010: 15–16) from London-based think tank, Chatham House. Most of Jammu residents opted for merging with India, but communal fault lines were noticeable (47% in Jammu, 73% in Udhampur, but much less in Muslim-majority districts, which adjoin Kashmir: 6% in Poonch and 0% in Rajauri); only 1% favoured independence (in Jammu), and obviously nobody chose Pakistan. In all parts of IaJK which were surveyed, Pakistan option was selected only in the Valley: in Srinagar and Badgam district—6% and 7%, respectively. In Ladakh Division, district-wise 67% in Leh and 80% in Kargil opted for India. A total of 30% of people in Leh voted for independence, and in Kargil, it was 20% (in comparison, in Srinagar it was 82%). The discourse within Jammu, the most heterogenous chunk of IaJK, locates this region as a victim of power tussle between New Delhi and Srinagar, regarded as key constructors of regional security dynamics. Local elites in Jammu contest Kashmir's domination and portray their regional interests as being threatened by political negligence within the erstwhile State of Jammu and Kashmir. They also object to New Delhi's Kashmir Valley-oriented policy, which as they claim, assumes that Jammu is always pro-India so centre's the attention should be focused on Kashmir. These accusations rose exponentially after the eruption of the anti-India insurgency in the Valley, which affected some Muslim-majority subregions within Jammu (particularly Doda, also Poonch, Rajouri) and had decisive impact on shaping power rivalry discourses of Jammu versus Kashmir. With support of the BJP/RSS led campaigns Hindutva was politicised in Jammu as a response to Islamic extremism. Moreover, glorification of the Dogra rule became a key narrative within identity re(building) strategies.[20]

A noteworthy illustration of diverse antagonisms within the then J&K (presently UTJ&K) is the Amarnath shrine issue. The Hindu shrine, considered one of the holiest by the believers, is located in Anantnag District, which borders Jammu's Doda. Each year for about 40 days between June and August, hundreds of pilgrims travel to pay respects to an ice stalagmite in

the holy cave, which is believed to be an embodiment of the Hindu deity, Shiva.[21] Following the decision taken on 26 May 2008 to transfer 100 acres of land to the Sri Amarnath Shrine Board, which had been formed in 2000 exclusively to manage the annual *Yatra* (pilgrimage) to the temple, massive protests erupted. The land was intended to set up shelters and other facilities for pilgrims, who perform arduous walk to the high-altitude temple. The land transfer was seen as Indian government's attempt to show domination and consolidation of power in Kashmir.[22] There were apprehensions that it would damage local ecology which strengthened the narratives of colonisation and exploitation, with accusations of altering the demography of the Valley by settling Hindus from the outside.[23] When land transfer was revoked, it triggered counter protests mostly in Hindu majority regions of Jammu,[24] with the BJP/RSS backing. The Hindus, supported by some Muslim local associations, expressed on the occasion their long-term complaints, that the consecutive governments had been neglecting Jammu for more than six decades. As a result of the agitation (the longest in Jammu), a curfew was imposed and the army was deployed. The final agreement made on 31 August 2008 allowed the shrine board to use the land during the *Yatra* period. The pilgrimage has indeed serious environmental consequences as the cave and the routes of the *Yatra* are located in an extremely eco-sensitive environment. In the detailed report, launched in March 2015, the JKCCS referred to *Yatra* conducted in high altitudes as 'a militarised pilgrimage'. The NGO highlighted the rivalry between different players, both state and non-state, engaged in the organisation of the event, and pointed out its serious environmental impacts. The state patronage to the pilgrimage is a historically inherited tradition, which continues till today; it reportedly goes back to the times when the British sold Kashmir to the Dogra dynasty in 1846.[25] In 2019, on the eve of Article 370 abrogation, expecting the upcoming turmoil, the government issued an advisory, requesting pilgrims to conclude *Yatra* and leave Kashmir as soon as possible, over imminent 'terror' threat.

Strategically located Ladakh, formerly a part of J&K, is a historically crucial point of the Silk Route, a connection between India, Central Asia and Tibet. Unique conditions unmet anywhere else,[26] including the geographical position, enabled the region to preserve and cultivate its distinctive, ancient culture. Geographic location determines Ladakh's significance in India's security policy. The India-Ladakh interactions have been complex and determined by geostrategic objectives of New Delhi, engaged in regional power rivalry with Beijing, which fosters Ladakh's enhanced militarisation.

Due to the conflict with Pakistan and Chinese territorial claims, India has defined two security objectives vis-à-vis Ladakh: (1) keeping it under control, (2) perceiving it through the prism of its commitment to India's defence. Ladakhis, therefore, both Buddhists and Muslims, remain a point of reference in the geostrategic power rivalry among the three nuclear states: India, China and Pakistan, with all three states having their own particular claims and interests. Increased threats from China date back to

taking control over a part of Ladakh, Aksai Chin, by the Chinese army after a short war in 1962, lost by India. It largely determined the interactions between mainland India and Ladakh, prompting New Delhi to reinforce their troops deployment in this mountainous region. To address this problem, in 1963, following the war with China, the Ladakh Scouts, known as 'Snow Tigers', comprising of tribal and local forces, specialising in mountain warfare, were established with a task to defend India's sensitive borders in Ladakh. The Scouts participated in the 1999 Kargil War with Pakistan and thereafter were reformed as an infantry regiment on 1 June 2000. The militarisation of Ladakh impacts the region's fragile environment[27] and it also provides income for young Ladakhi men, especially from poor rural areas, who strive to join Ladakh Scouts, the Indian paramilitaries. They also earn money as guides for the Indian army, for which some of them drop out of school, losing their chance for education and better perspectives.[28]

The perception of Ladakh, held by some Indians, portrays it as a territorially and culturally distant land, attractive, but hard to live in.[29] According to some Ladakhis, who accentuate their identity within India and within the former State of J&K, the administration of the former J&K was 'predominantly communalist',[30] and their distinctiveness, language and culture were neglected and underrepresented. Ladakhi (and Kashmiri in general) politics became communalised already during the British rule.[31] In 1933, the local Buddhist organisation (Ladakh Buddhist Education Society, later replaced by the Young Men's Buddhist Association) was set up, with strong influence of Kashmiri Pandits.[32] It raised the issue of growing number of Muslims and fear that due to their high birth rate, they could outnumber Buddhists. The engagement of the outsiders in pre-independence Buddhist Ladakhi activism, heralded the supremacist understanding of Indian political system by the Hindu majority, with the assumption that, they know what is good for Ladakhi Buddhists'.[33] Throughout the decades, the Hindu nationalist organisations, such as Praja Parishad or Jan Sangh, played the communal card, agitating Buddhists against the Muslims and polarising local communities. Against this backdrop, some Hindutva proponents framed their narratives around conservative populism and majoritarian supremacy by projecting Buddhists as 'their own' people on the flawed premise that their religion is merely an offshoot of Hinduism. Therefore, from Hindu radicals' perception a Buddhist Ladakh is automatically assimilable in the *rāṣṭra*. On demographic, ethnic and religious grounds this classification is an oversimplification due to Ladakhi Buddhists' unique, separate identity and distinctive culture, and because Ladakh is not only Buddhist: the Shīʿa Muslims constitute a majority in Kargil (some Kargil Muslims, however, are Sunnīs, for example those from Padum in Zanskar subdistrict, which has Buddhist majority). But the more significant question is whether numbers alone permit the essentialising of any territory and collective identification along lines of religion. The answer of Hindu far-right is resoundingly affirmative since their majoritarian

politics of claiming India as a Hindu nation functions precisely through such logic in their attitude vis-à-vis minorities. In line with this perception, not only Ladakhi Buddhists, but also Kashmiri Muslims, though a majority in the Valley, are successfully outnumbered and, therefore, should be dominated by Hindu Indians, according to their discourse, mentioned by Mridu Rai (2019: 265). It has to be highlighted, that in Leh politics (unlike in Kargil), there was a strong popular demand for union territory status. In 2000 by the Ladakh Union Territory Front (LUTF) was established, under the leadership of influential Buddhist politician and Ladakhi nationalist, Thupstan Chhewang, who had started his campaign already in the 1970s. He merged LUTF with BJP, hoping that the party would materialise the promise of 2014 electoral campaign for a separate union territory in Ladakh. Disappointed by the then unfulfilled pledges of BJP, he quit politics in 2018.[34] In 2021, he was elected as the President of the Ladakh Buddhist Association.

The HR violations of the erstwhile state of J&K are predominantly discussed with reference to Kashmiri Muslims and Hindu Pandits. The latter were forced to flee their ancestral homes at the beginning of the 1990s, to escape the Islamic militants. Obviously, the overwhelming majority, if not all Pandits never supported the anti-Indian uprising in the Valley,[35] assuming that such interpretation of the self-determination became an illustration of the Islamic *jihād,* which would naturally exclude and marginalise Kashmiri Hindus. Hindu nationalist parties were additionally playing the communal card, by arguing that federal authorities had been appeasing Kashmiri Muslims and neglecting the plight of Pandits.[36] In order to achieve their objectives of returning to their homeland, some Pandits adopted and expanded the narrative spread by the non-Pandit Hindu hardliners. For example, the organisation Panun Kashmir Movement (PKM, Our Own Kashmir), founded in 1991, in the aftermath of the exodus, demanded in its resolution establishing a homeland for Pandits in the Valley under central administration as a union territory. They advocated scrapping of Article 370, which was pledged by the BJP. During its annual convention on 27 August 2017, the PKM also demanded the revocation of Article 35A, which came as a surprise since it had protected Kashmiris' (irrespective of their religion) special rights vis-à-vis the outsiders. As permanent residents of Kashmir, they had the rights to buy immovable property, to vote in elections, to acquire certain government positions, to obtain scholarships. The Pandit refugees decided to support the influx of non-Pandit Hindu to the Valley, probably hoping that it might be the only chance to return to their homeland. 'Allowing large numbers of Hindus to acquire land, employment and other incentives to settle in the state may be the next best thing', Mridu Rai (2019: 270–271) penned, adding that 'Being seen as willingly sacrificing their privileges as permanent residents in the interests of full national integration would be a worthwhile bargain in return for the saffron brotherhood's help in realising their dream of a homeland in the Valley—their *Panun Kashmir*—and the Hindu *rāṣṭra* protecting it'. In 2019, it seemed, their

wishes partially materialised once the special status of IaJK was removed. Nonetheless, it may turn out that Pandits will again fall victim to the federal government's political cunningness as it remains highly dubious whether it is Hindu Pandits who will gain any special benefits from the bifurcation of the erstwhile state of Jammu and Kashmir. Some Pandits are apprehensive that the new privileges might rather go to non-Pandit Hindu newcomers.

A thorough investigation of local fault lines surpasses the scope of this book; therefore, they were only briefly invoked as an exemplification of local complexities, which are much deeper and run through the entire IaJK, between the three major regions and within them. They are religiously, culturally and ethnolinguistically grounded and deserve a separate, in-depth study in the context of future dynamics in the disputed region. It is crucial to take these complexities into consideration while crafting a people-oriented solution of Kashmir imbroglio, including the relations between all chunks of IaJK and mainland India.

7.2 Post-2019 era: Jammu and Ladakh in new UT's[37]

The regional complexities, diverse identities and interests laid the ground for the reception of the J&K's bifurcation. In the Valley, the decision was predominantly assumed as a manifestation of unilateral, autocratic decision by New Delhi. However, the reception of Indian government's policy differed in other chunks of IaJK.

The BJP-led government did not trifurcate the erstwhile state of J&K (into separate UTs—Jammu, Ladakh and the Valley, which would be appreciated by some Jammuites who argue their region is dominated by the Valley and wish to be delinked from it) and kept administrational unity of the Valley and Jammu. It was done for particular political and security-related reasons, namely to avoid the situation of creating a predictably restive, anti-India separate unit with overwhelming Muslim majority in the Valley. The Valley-oriented narrative (largely negative regarding India's policy and bifurcation) is likely to be undermined in the discursive space within UTJ&K. Most residents of Jammu division, especially those, who have strong pro-BJP leanings, celebrated the abrogation. In Jammu, the restrictions introduced in the aftermath of the bifurcation hit local business and academia. Lack of internet or very slow connections introduced chaos in everyday life, excluded the Jammu residents from the access to information, contact, etc. The students were also temporarily cut off from their academic duties. Few political leaders were prevented from holding press conferences and delivering speeches. Some of them, like Gulchain Singh, the president of Charak Dogra Sadar Sabha and former minister, were detained by the police. Others were placed under house arrest in Jammu (for example, J&K Pradesh Congress Committee president, Ghulam Ahmad Mir), which was reminiscent of the detentions in the Valley. Apparently, in 2020, there were reports that some Jammu residents became disenchanted with their support for J&K bifurcation but anyone

who questioned the annulment of Article 370 or demanded its restoration, risked incarceration.[38] Following the formation of the UT, which combines Jammu and Kashmir, the narrative of political deprivation is likely to prevail among Jammu elites, with a risk of enhanced communal rivalry, also within Jammu, where cross-religious Hindu-Muslim affinities which always characterised the region's distinctiveness, may be further politicised. It has to be remembered that some Hindu organisations in Jammu still demand liberation from what they regard as the Valley's suzerainty; current policies of New Delhi may therefore be regarded as a major hindrance in materialising their aspirations.[39] Consequently, the sense of disenfranchisement in Jammu may lead to enhanced resentment against New Delhi's policies; communalisation of local politics may result in bolstering rivalries and polarisation of Muslim and Hindu communities within some districts of Jammu (Doda, Rajouri, Poonch).

The reactions to the Article 370 abrogation within newly created union territory of Ladakh (UTL) illustrated how strongly the local identities have been politicised along the communal fault lines and how diverse are the narratives in this part of the former state. The J&K's bifurcation was celebrated in Leh, as the people considered it as final fulfilment of the BJPs promise, a chance for development,[40] and a long-awaited liberation from the Valley's domination. A 40-year old Buddhist owner of tourist agency and local politician pointed out that Ladakhi people are very satisfied after being declared as UT, but they demand safeguarding their jobs, land, heritage, culture, etc., and expressed apprehension regarding the revocation of Article 35A. People on the one hand were grateful to New Delhi, on the other, they were also uncertain whether the BJP would keep the promise to provide Ladakh with the stipulations under the 6th Schedule of Indian Constitution, as it was pledged in the party's election manifesto for Ladakh (Leh and Kargil) Parliamentary Constituency in May 2019. The 6th Schedule provides some level of autonomy to the selected regions. It allows to establish autonomous councils (they exist in Assam, Meghalaya, Tripura and Mizoram), empowers the governors to reorganise boundaries of tribal areas, provides special safeguard for rights of tribal population, to preserve their local culture and languages. Similarly to the 2014 election campaign, the 2019 manifesto reiterated the BJP's commitment to establish a separate union territory in Ladakh (which was tantamount to abrogation of the Article 370) and vowed to build connectivity, major power infrastructure, inclusion of Bhoti (Ladakhi) language in the 8th Schedule of the Constitution of India and development of the tourism sector. Section 8th recognises 22 official languages and empowers them obliging the government to provide special protection. These languages are also included as candidate's medium communication of choice for public service examinations.

Notwithstanding people's apprehensions, on 15 August 2019, there were celebrations in Leh district of what was considered the first genuine independence day in Ladakh. Once the UTL was established, additional 164

young men were recruited into the Indian Army's Ladakh Scouts, which was celebrated during a parade in Regimental Centre located in Leh. There was practically no shutdown of internet and telephone service. At the same time, Kargil observed 31 October 2019 as a 'black day'; the markets were shot down to protest against the government's decision.[41] The Muslims were apprehensive of discrimination, political deprivation and domination by Buddhists; some argued that they would rather feel more comfortable in a Muslim majority unit, some emphasised the necessity of safeguarding their basic rights which could be done by introducing a just balance and equality-based governance within Ladakh. In Kargil, the authorities decided to temporarily introduce more restrictions than in Leh (regarding freedom of movement and internet access). The Muslim-Buddhist tensions and distrust which had already been embedded in everyday lives, are likely to exacerbate, with growing narrative of dispossession in Kargil. According to a tour guide, with profound experience in the region, 'In Padum the conflict has escalated over the last years so much, that our Muslim driver refuses to eat with us in Buddhist restaurants and Buddhist horseman advised us not to book a room in hotels owned by Muslims'. These regional divisions, if unaddressed properly, may escalate, contribute to additional communalisation of the UTL's internal policy and serve as a tool in divide and rule policy pursued by the Indian authorities, with Buddhist community being regarded as more 'suitable' Indian citizens, as Hindutva ideology stipulates.

The formation of two separate UT's may be assessed as a politically crafted operation, which illustrated Narendra Modi government's policy of *faits accomplits* vis-à-vis the IaJK's residents. In Ladakh, where historically shaped Buddhist-Muslims tensions persist with local diversities in the administrative units of Kargil (Muslim majority) and Leh (Buddhist majority), potential divide and rule policy by the Centre may bolster local animosities. Some Muslims of Kargil perceive their dispossession and marginalisation vis-à-vis the Buddhist domination in Ladakh. The Buddhists and Shīʿas from Ladakh seek greater voice in handling their own affairs and to halt the tradition of being politically dominated by the Muslims from the Valley. However, all Ladakhis remained concerned about safeguarding their future property rights and job opportunities. Lack of special status, which had guaranteed local government jobs and scholarships for the former J&K residents, opened recruitment opportunities for the outsiders in the newly created UTL. Therefore, in 2020, the demands that New Delhi introduces domicile laws stipulating employment and land access limitations to the outsiders intensified in UTL, especially among the young people.[42] Conspicuously, this quest united the residents of both Leh and Kargil.

There are also other problems that Ladakhis, irrespective of ethnic or religious affiliations, regard as vital for the central government to address. They include danger risk reduction measures and aid against natural disasters. Due to its geographic location, Ladakh is particularly exposed to the effects of climate change: the shrinking of mountain glaciers, leading to glacial

lake outburst floods, damaging local settlements.[43] The Ladakhis' perception of India's policy vis-à-vis the region will depend on how New Delhi tackles all these challenges with inclusion of the locally appointed representatives, genuinely safeguarding their freedom of expression, freedom from discrimination and the right to participate in public affairs.

The unilateral change in status quo and infrastructure development in Ladakh raised concerns in Beijing, where it was viewed as challenging to China's interests and sovereignty. The Chinese People's Liberation Army territorial incursions in Galwan Valley in Ladakh, close to Chinese-controlled chunk of the former PSJ&K, Aksai Chin, in May/June 2020 and violent clashes with Indian forces along not well demarcated *de facto* Line of Actual Control (stand-offs along the border occur regularly, but in 2020, deadliest encounters since 1967 took place with victims on both sides) were a manifestation of Beijing's growingly assertive policy in the region. The clashes erupted even during the Covid-19 pandemic (the first active cases in UTL were reported on 6 March, in mid-June the virus started wreaking havoc in the region).[44]

China-controlled Aksai Chin is as a crucial link between Xinjang and Tibet, a vital element of strategic rationale and territorial integrity based on one-China principle. Both Asian giants are likely to become more vigilant regarding to each other's bellicose narrative. In August 2019, Amit Shah declared in fiery speech in Lok Sabha that he would 'give life' for integrity of Jammu and Kashmir, which included Aksai Chin and PoK (Pakistan-occupied Kashmir in India's official nomenclature—AK). The LAC may turn into a flashpoint of Sino-Indian rivalry (similarly to the LoC with Pakistan), which may lead to the extensive militarisation of the UTL.

After bifurcation of IaJK, in the UTJ&K the local power rivalry is likely to remain communal with tensions occasionally erupting and more political empowerment shifting to Jammu. The exceptionalism and significance of the Valley Muslims' victimisation narratives in the discursive frame regarding political and sociocultural dynamics within the newly established UTJ&K is likely to be institutionally and structurally debilitated, which is not tantamount to the loss of determination of the Valley inhabitants to oppose the injustices and violations of their rights. Potential radicalisation of Kashmiri Muslims on the one hand, and a prevalent sense of socio-political deprivation on the other, are likely to characterise New Delhi's interactions with the indigenous inhabitants of the Valley in the upcoming years, with mutual distrust and disenchantment.

Notes

1. Behera (2006: 105).
2. More: Para (2020: 10–18).
3. I follow Snedden's (2015) nomenclature regarding the inhabitants of IaJK.
4. Behera (2012: 170–171).

5. Para (2020: 2–3).
6. On marginalised Ladakhi narrative and cultural challenges to Ladakhi identity: Aggarwal (2004), Vasan (2021: 226–237). The latter author makes noteworthy remarks on young Ladakhis (mainly from Leh) studying in Delhi or Chandigarh and their parents' apprehensions of losing their regional culture, identity and values. 'She has become Indian', one parent is cited, referring to her as an 'Indianised' daughter.
7. Chowdhary (2010: 4–5).
8. Behera (2011: 57–61).
9. Among ethnic Dogras in Hindu-majority districts of Jammu, the upper-caste Hindus are the most distinctive, but there are also Dogra Muslims and Sikhs.
10. Chowdhary (2010: 6–7).
11. Wani (2019: 30).
12. Snedden (2015: 204).
13. Transformed in late 1960s from Young Men's Buddhist Association (YMBA), formed in 1934 to represent the community's interests.
14. Ladakhi Buddhists had already organised campaigns in favour of autonomy, for example in 1969. The agitations were also influenced by some Buddhist religious leaders. More: Van Beek (2000).
15. Behera (2006: 116).
16. Aggarwal (2004: 72, 77).
17. Behera (2006: 116).
18. Snedden (2015: 204).
19. KW (2019-05-06).
20. A noteworthy analysis of post-1990s cultural narratives in Jammu and Dogra dynasty glorification via installing the statues and memorials associated with their rule in the public space of Jammu city: Kumar (2021: 206–217).
21. JKCCS (2017b: 9, 176).
22. IR (2019: 15).
23. Devadas (2018: 32).
24. Ubbott (2010: 347–355) investigates women's mobilisation in the Amarnath agitation, emphasising that the reason for their participation was not purely political, but rather religious and regional. Women, therefore, became 'the bearers of Jammu's cultural and religious identity'.
25. JKCCS (2017b: 20).
26. Van Beek (2000: 526).
27. Sen (2011: 219).
28. Vasan (2021: 231).
29. Sen (2011: 224).
30. Van Beek (2000: 528).
31. More: Van Beek (2000: 531–533).
32. In 1931, Srinagar-based neo-Buddhist Pandits formed the Kashmir-Raj Bodhi Maha Sabha organisation (KRMBS), which submitted memorandum to the Glancy Commission, addressing the backwardness of the region, highlighted the need for educational development, and warned against Muslim progeny outnumbering Buddhists'. Van Beek (2000: 532–533). The Glancy Commission was appointed by the Maharaja to address grievances and popular protests (particularly among the Muslims), which erupted in the former PSJ&K in 1931. Ladakh was not given any representation in the commission. Its socio-economic and educational problems were discussed by the KRMBS that spoke on behalf of all 'Kashmiri Buddhists'.
33. Van Beek (2004: 201), cited by Wani (2019: 33).
34. More: Morup (2000: 2–4).

35. Snedden (2015: 203).
36. Duschinski (2018: 175).
37. The information for the purpose of this subchapter was collected *inter alia* online, directly from the inhabitants of the respective regions of Ladakh and Jammu. Some additional accounts of the local people were attained with the precious support of a trekking tour guide, a regular visitor to the region (all names withheld at request).
38. Raafi (2020).
39. Among others, Ikkjutt Jammu, a former social organisation, which functions as a party since November 2020, demands Jammu Division's statehood and restoration of Dogra heritage in the region. It also wants Kashmir Hindu exodus to be recognised as genocide and campaigns for the division of Kashmir into two UT's—one only for Kashmiri Hindus who should be repatriated.
40. ToI (2019-10–31).
41. On contradictory reactions in Leh and Kargil: Vasan (2021: 226).
42. Javaid (2020b).
43. More: Ikeda–Narama–Gyalson (2016: 1–4).
44. By the end of 2020, around 9500 people were tested positive and 127 people died in UTL. MHFW (2020).

8 Concluding notes

Empower the people, expunge impunity

Agnieszka Kuszewska

Shrimoyee Nandini Ghosh, a New Delhi-based lawyer, human rights researcher and journalist, who spent years in Kashmir, once quoted a witty saying she heard in Srinagar, depicting India's incessant attitude vis-à-vis Kashmir: 'India to the UN: Kashmir is a bilateral issue. To Pakistan: it is an internal issue. To Kashmiris: it is not an issue at all'.[1] For the indigenous inhabitants, Kashmir is undeniably an issue: permanent fear, sense of injustice, institutionalised deprivation, violence and uprooting, became their life experience. The prolonged, multidimensional subjugation and human rights violations, with perpetrators being systematically exempted from prosecution, should make Kashmir an area of concern for international community and a point of reference in the general debate on human rights in the third decade of the 21st century. The fact that bilateral Indo-Pakistani attempts to address and resolve the conflict have utterly failed, should call for enhanced Kashmir-oriented attention of the world.

The major objectives of India's policy vis-à-vis Kashmir have not undergone significant shifts irrespective of which party—Congress or the BJP is in power. The collective punishment methods, often prejudiced depiction of Kashmiri Muslims as India-hostile enemies, contradict the official narrative of the Indian governments: Kashmir (including all of its residents) is an integral, inseparable part of India and its people are Indian citizens (to whom the Constitution guarantees equal rights). 'Why don't you feel our pain if we are a part of your body?,[2] one young Kashmiri asked the Indian delegation during a meeting in the town of Tangmarg in the aftermath of the violent summer of 2010. The supremacist approach vis-à-vis Kashmiris in Congress-ruled India was symbolically demonstrated during the 2013 concert of the Bavarian State Orchestra conducted by Zubin Mehta, organised in Srinagar by Germany's ambassador to India. The event was heavily guarded and restricted only for Indian elites (almost 1500 guests: bureaucrats, Bollywood stars, security officials). It simply excluded the locals, who could only hear the music floating across the waters of Dal Lake. The concert was shown live in almost 50 countries across Asia and Europe; Kashmiris considered it an act of the Indian government to show that in the volatile region 'everything is normal'. The emphasis on 'normalcy' has become a keyword in all governments' narratives

DOI: 10.4324/9781003196525-9

regarding Kashmir, even when it is turned into curfewed, heavy-militarised region, resembling the war zone. Restrictions on core civil liberties and imposition of legislative and normative regulations, which aim to ensure complete control over the IaJK's residents and resources without justly (or, with selectively) including them into a decision- and lawmaking process, were intensified after August 2019. The general political climate in India during the second term of Narendra Modi with escalated Hindutva-oriented far-right nationalism led to increased persecution of Kashmiri Muslims in mainland India. The hostile attitudes and the number of attacks against Kashmiris outside Kashmir escalated; those who questioned the New Delhi's post-5 August 2019 policy were particularly vilified. As of early 2021, the internet was still slow in Kashmir and people-to-people contacts were highly limited. The coronavirus pandemic enhanced the restrictions, putting the restive region into a 'double lockdown'. It may be assumed that the resistance in the Valley is likely to become more indigenous with a lesser (yet continued) presence of outsiders/infiltrators; the latter recurrently captured headlines over the last three decades to validate India's narrative on primarily Pakistani-inspired nature of the insurgency.[3] However, Pakistani territorial revisionism and the proxy campaign are likely to persist and bolster radical militancy, thus contributing to HR violations.

Investigating the conflict by portraying the civilian population trapped between the Indian armed forces and Pakistan-supported *jihādists* may seem simplistic, yet it cannot be denied that the majority of indigenous Kashmiris experience the appalling results of Pakistan's revisionism, India-authorised draconian legal acts providing impunity to the perpetrators of the abuses, the ongoing encounters with militants, and many other repercussions of this endless conflict. The international and local reports on Kashmir published by GOs and NGOs are well substantiated and provide a detailed account of HR abuses and democratic backsliding in India. The exclusivist narratives and the policy of disenfranchisement are accompanied by the process of dismantling positive features of inclusiveness in India and infest collective memories with falsified, communalised and ideologised history. The Hindutva trends, which already existed in India's modern history, have been amplified by the BJP/RSS with what can be assessed as the ideological *coup d'état,* which is likely to affect the socio-political future of India as a whole, Kashmir-related discourses and Indo-Pakistani relations.

Following the bifurcation, the Kashmir Valley was treated with a heavy hand with the armed forces unceasingly acting with *de jure* and *de facto* impunity vis-à-vis its inhabitants. The new laws bolstered fears of Kashmiri indigenous inhabitants that they might be disenfranchised demographically and economically by encouraging migration of the outsiders and depriving Kashmiris of their land and properties, thus undermining the role of local civil decision-makers, affecting the environment, agriculture, tourism, etc. The post-August 2019 lockdown, prolonged and exacerbated additionally by the Covid-19 pandemic, enabled the authorities to tighten a grip over Kashmiris and resulted in double lockdown with dismal effects.

The socio-economic and health-related consequences of this situation were difficult to predict as of early 2021, when the infections were still rising. The general spirit of everyday resistance and the will to undermine India's power increased in the Valley in the post-2019 era despite severe restrictions which were introduced. The Islamic radicalisation, already present in the Valley as dominating counter-narrative of Kashmiri Muslims vis-à-vis New Delhi is likely to pose an unceasing challenge and addressing this problem will serve as a litmus test of India's capabilities of effectively interacting with Kashmiris. The first UTJ&K elections for District Development Councils (DDCs), representative local bodies responsible for economic development and public welfare, held in November-December 2020, were viewed as a contest between the BJP and local parties. With the turnout of over 51% among 6 million eligible voters, it brought substantial victory to the People's Alliance for Gupkar Declaration (PAGD), an alliance of seven mainstream Kashmiri parties, which won 112 seats out of 280. With 74 seats, the BJP secured control of a few DDCs in Jammu and none in Kashmir.[4] It proved that majority of the UTJ&K residents from the Valley were disenchanted with New Delhi's policies and supported the restoration of Article 370.

The far-right nationalist leanings in India inspire to draw pessimistic conclusions regarding the future prospects of addressing the HR abuses in Kashmir. Jawaharlal Nehru wrote in *The Discovery of India*: 'Unity is always better than disunity, but an enforced unity is a sham and dangerous affair, full of explosive possibilities. Unity must be of the mind and heart, a sense of belonging together and of facing together those who attack it'.[5] His memorable *Tryst of Destiny* speech delivered on the eve of independence, envisaged India 'awaking to life and freedom'. Regrettably, Jawaharlal Nehru and consecutive Indian governments, both Congress and BJP-led, failed to introduce a coherent and inclusive policy in Kashmir,[6] and were rather interested in installing supportive local governments.

It seems that in today's India, the two mutually exclusive visions of its future unchangeably compete with each other. The first refers to federalism, protects secular values, constitutional democracy, and aims to safeguard equal rights and freedoms of all citizens. The second refers to Hindutva-based, with politically projected 'otherness' being symbolised by the image of an unpatriotic, treacherous threat to the 'pure' order of a Hindu majority state. It fosters polarisation of the society and legitimises violence against those who are deemed 'outsiders'. Its identity is derived from supremacist Hindu nationalism and casteism. Notably, its proponents do not genuinely advocate equal rights within Hinduism; consequently, this ideology seems prone to facing growing resistance. Being largely divisive it upholds casteism with its hierarchical inequalities (the RSS leadership is represented mostly by the upper caste members although they claim to work towards ending caste discrimination), which is difficult to be reconciled with the declared principle of 'Hindu oneness'. 'What kind of state do Indians want?' Nitasha Kaul (2010–2011: 52–53) asked a decade ago, appositely contending that India requires a rebranding in substance with moral

renewal. This argument is even more vital today. India's concept of nationhood, presently hijacked by the hawkish narrative of far-right Hindutva project, needs to be reconceptualised, deradicalised and democratised.

Aggressive nationalism, curbing on civil rights, deprivation and persecution of minorities and vulnerable groups, questions New Delhi's democratic credentials. Additionally, India's democratic backsliding has undermined its chance to act as a role model promoting values-oriented policies and HR in the region, including Pakistan. Ayesha Siddiqa (2020) argued in January 2020: 'While India is no more a mental stimulant as it used to be, domestically, the Pakistani military has neutralised almost all segments of the formal civil society. The media and the NGO sectors have turned hopeless'.[7] It is in the interest of India and the international community to strengthen, not downgrade, its position in the club of global democracies which contain supremacist and populist narratives. In order to avoid further decline, India should establish an inclusive framework for its nationhood, which would embrace the entire country and refer to the values in which it is rooted: multiculturalism, diversity and pluralism. Holding cyclical elections is not a sufficient determinant for being a genuinely democratic state, which adheres to the rule of law and respects the rights and freedoms of all its citizens. Deradicalisation and pro-democratic shift are very challenging tasks, especially if we take into consideration both domestic nationalist leanings and the current global wave of populist and chauvinist narratives. These dangerous trajectories may indirectly create favourable conditions and excuses for authoritarian leaders to further undermine democratic principles and oppressively violate basic rights and civil liberties.

Kashmir undeniably exemplifies disturbing patterns which denude India's structural problems and reveal that long-standing recognition of India as a constitutional democracy, which safeguards rights and freedoms, has largely turned into a *cliché*, of which the international community is increasingly aware. Nonetheless, in recognition of India's aspirations as regional power, contributing to counterbalancing Chinese authoritarianism, perceived as a major international threat, the Western democracies are rather reluctant to openly manifest a critical approach towards HR violations in IaJK. Moreover, India's arguments of sovereignty, the internal dimension of the Kashmir issue and the struggle with Islamic terrorism are largely effective arguments which guarantee external non-interference. The lack of firm international reactions against HR violations, especially from the countries regarded as pillars of democracy (including the EU, which fails to sufficiently address the problem of far-right populism and human rights abuses, particularly in Poland and Hungary), to a large extent authorises bigoted leaders to institutionally and legally persecute selected groups/minorities and dispossess them of their rights. Consequently, current globally expanding undemocratic, populist and nationalist leanings provide a certain framework for unspoken acquiescence towards HR abuses in Kashmir (also in Pakistani-administered chunks; the multi-layered patterns of HR violations there are highly underreported) and elsewhere in the world.

The restoration of Kashmir's autonomy is rather unlikely, as India's major parties seem unwilling to do so; it is hard to assume that the Congress Party, if it returns to power in the upcoming future, decides to re-enact Article 370, which would provoke a fierce reaction of the far-right groups and other opponents. The majority of Ladakh and Jammu residents were also supportive of New Delhi's policies, hoping to reclaim their space in the discourse on IaJK, earlier dominated by the Valley. Nonetheless, these two chunks of the erstwhile State of J&K are not free of HR-related challenges, local rivalries, narratives of dispossession. New Delhi needs to acknowledge that Kashmir joined the Indian Union under certain provisions and its legal, socio-political and economic status should be negotiated with accepting that all residents of the former state are equal citizens, who are the participants of the dialogue, not the subordinate subjects to be forcibly assimilated, demographically attenuated and obliged to accept the state-imposed, unilaterally taken, supremacist decisions. Kashmiri leadership should also recognise the plural character of IaJK's society, which includes peaceful repatriation of Hindu Pandits to their homeland, without turning it into a majoritarian, ideological battlefield. The policy vis-à-vis HR in both UTs should acknowledge their heterogenous character and be aimed at safeguarding constitutional rights, civil liberties and privileges of all inhabitants of IaJK, diffusing communal antagonisms, expunging impunity of those who violate HR, activating local economy, productivity (agriculture, handicraft etc.), preserving unique natural environment and culture.

While constructing its international image as an aspiring power with democratic credentials and adherence to the rule of law, India is experiencing a major democratic backsliding and erosion of civil liberties, yet, it is not an irreversible process. The country is facing a crucial moment in history; its future image and position in the regional and global order will depend on which destiny India chooses. Due to India's unprecedented diversity, vibrant civil society and rich history of resistance against tyranny and injustice, it can be cautiously assumed that the project of an aggressively majoritarian, one-religion state is likely to be curtailed. Within this process, current policies vis-à-vis IaJK's indigenous inhabitants based on centre-imposed patterns of control, militarised supremacy and different forms of institutionalised exclusion, require reorientation. India should aim at consolidating its international and domestic image as a genuinely inclusive state, which fulfils its obligation to respect and safeguard all rights and freedoms in non-discriminative, equal manner. With its heritage of cherished diversity and current experiences of multi-dimensional development and fast modernising economy, placed among the top six largest in the world, India is the key regional actor, which has a potential to perform as one of the global pillars and proponents of genuine, constitutional democracy and to promote these principles internationally. In this regard, accommodating aspirations, empowering local communities by recognising their diversities, appeasing rather than inciting local fragilities and de-communalising the narratives within the former state of J&K can

become a manifestation of such capabilities and a proof that India stands out among its systemically repressive neighbourhood as a role model: a state which conducts an inclusive policy based on equality and justice towards all its citizens and adheres to internationally recognised human rights standards.

Notes

1. Ghosh (2019). Online discussion with Shrimoyee Nandini Ghosh, May 2020.
2. Katyal (2016: 103).
3. On the role of Pakistani India-centric policies, and strategies vis-à-vis Indian administered Kashmir, see: Balcerowicz–Kuszewska (2022a).
4. Sharma–Iqbal–Masood (2020).
5. Nehru (1985: 526).
6. Noorani (2013: 515).
7. Siddiqa (2020).

Part II

Violations of human rights in Pakistani-administered Kashmir

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9 The frameworks of impunity

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The perpetrators of human rights (HR) violations in Pakistani-administered Jammu & Kashmir (PaJK) include members of the government apparatus, the military, security forces, intelligence agencies, police and militant groups, mirroring the situation across the Line of Control (LoC) in Indian-administered Jammu & Kashmir (IaJK). The chapter is by no means intended to be yet another report on HR violations in PaJK, which would have to—as all attempted reports heretofore—rely on extremely fragmentary, partial data due to restrictions imposed on PaJK by the government of Pakistan, the military and the agencies, which in itself amounts to one of the principal violations of HR, namely the right to information. For the same reasons, this chapter does not aspire to provide an encyclopedic and comprehensive overview of *all* such abuses or all categories either. Rather, the idea of what follows is to sketch a model, nature, structure and ramifications of HR violations in PaJK, contingent on the nature of the control of the territory by Pakistan and its policies with respect to it.

The actual context of HR and their blatant violations is determined by the constitutional and other legal provisions *imposed* on PaJK by the Pakistani authorities. The population of Kashmir has had no involvement in tailoring the actual legal and administrative principles which now shape their realities.[1] The palpable inconsistencies and contradictions the legal systems of Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB) are fraught with are deliberately maintained by Pakistan as instruments in dealing with the external policies, and this also explains why the legal status of PaJK is meant to remain rather vague and somehow undetermined. The population is consequently kept hostage as a kind of vexatious and largely dispensable appendage to the territory, which is the prime asset to the civilian-military rulers based in Pakistani Punjab.

9.1 Monitoring human rights

Unlike in IaJK, there has been extremely limited access to information that would allow both local HR activists and monitors or foreign observers and researchers to freely collect more detailed data of statistical importance.

DOI: 10.4324/9781003196525-11

Most such attempts have to be undertaken in collusion with Pakistani security authorities in the sense that the latter consistently monitor the freedom of movement of researchers, their contacts, duration of conversations with informers etc., and in consequence the reports, surveys etc. which have so far been published are rather a result of what Pakistani security and administrations have knowingly approved, at least to some extent.

The mere legalisation and basic activities of organisations comparable to those which have operated in IaJK (such as JKCCS, APDP, IPTK), even though regularly harassed and their activists detained, is hardly imaginable on the Pakistani-administered side. Detailed and well-researched reports produced by these organisations (e.g. IPTK, 2009; JKCCS, 2012; JKCCS, 2015-04; JKCCS, 2015-09; JKCCS, 2017-A) etc. are simply inconceivable in the context of PaJK. It is likewise unthinkable that anything could have ever been published, or even unofficially (and illegally) printed and circulated, in PaJK approaching the series of extremely detailed publications and first-hand reports prepared by the Institute of Kashmir Studies, Srinagar,[2] founded on 16 October 1992 as a 'purely academic forum to study historical, cultural and social heritage of People of Jammu and Kashmir State'. Based on the account of one of the activists and editors (names withheld), the Institute published 42 reports and publications between 1993 and 1999,[3] and after some collaborators had been tortured or killed, the chief editor was forced by the Indian military to burn the depot with all the publications and the press. Their regular reports were meticulously prepared, providing lists of named victims, details of atrocities committed, photographic records of dead and maimed bodies, and represented a mine of first-hand data on well-documented crimes against humanity perpetrated by the Indian apparatus of state violence. Nothing of this sort would ever be permitted or tolerated by Pakistani authorities to such an extent.

The only report on the situation in PaJK that genuinely originates from there and is also unique in its comprehensive character inasmuch as it literally covers all 32 sub-divisions (*tehsils*) of AJK (none of GB) and is based on 10,000 questionnaire forms examining the opinions of a vast cross-section of the society is the *Citizen Public Opinion Survey—AJK: Report 1.0*,[4] conducted and aggregated over a period of more than five years. Based on well-prepared methodology, the report can be considered reliable and representative for all AJK. It is focused on the issues of the identity of Kashmiris ('national question'), governance, the economy and social policy. A staggering 97% of the residents of AJK 'believe in the integrity of the State of Jammu and Kashmir (84,471 sq. miles) as it stood up to October 1947', 73% identify themselves primarily as Kashmiris (27% as Pakistani and 0% as Indian), 80% are critical or highly critical of the 'current constitutional and administrative structure' of AJK and 98% opt for a genuine and independent constitution as a citizen-state contract. These results are vital for a better grasp of the self-perception and identity of the population of AJK, especially in the context of new Pakistani identities being imposed

on the whole region by Islamabad, and form an essential backdrop for our understanding of the nature of HR violations in AJK, and more generally in PaJK which concern the people's culture, identity and aspirations.

There are a number of HR organisations and activists in Pakistan in general, outside of PaJK, but none of them ever ventures to undertake any serious, wide-ranging and detailed reports on the situation in PaJK, for a variety of reasons, including the control of and restrictions on their activists' movements and local contacts; the cap on and censorship of all information Pakistan considers sensitive (and this includes almost everything); the local populace's fear of disclosing their views and of sharing their observations due to possible repercussions, including against their family and loved ones; fear of harassment, persecution, detention, arrest, torture or disappearance of those seeking information; and last but not least, the awareness of all HR organisations in Pakistan that the first comprehensive report they compile will deal a deadly blow to their legal existence in the country. These practicalities explain why no single organisation in Pakistan monitoring the HR situation ever places GB and AJK on their agenda. All reports on the situation of HR in Pakistan share one feature: PaJK is a blind spot. All these fears also effectively prevent the local population from establishing any independent monitoring centres or officially undertaking any such activities. The four very brief reports published by the Human Rights Commission of Pakistan (HRCP, 2004; HRCP, 2010; HRCP, 2014; HRCP, 2017-GB) are certainly a noteworthy exception. And even they present the situation in an extremely cautious, mild and uncontroversial manner, prudently focusing on politically relatively uncontentious matters, such as health, family violence and rape, abuse of children, education, natural disasters etc. Furthermore, the statistics we may encounter in the printed or Internet publications either do not cover AJK and GB at all or are often based on the monitoring of newspapers and news websites, which publish under actual censorship that already filters any undesired information. An official body that reports to the UN, including the UN Human Rights Council and the UN Security Council, is the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organisation enjoying a special consultative status with an office in London and active since 1984. The organisation has produced a number of reports on the region, which mostly rely on second-hand sources or take the form of political statements.

Foreigner observers and researchers face a multitude of restrictions which make it impossible to conduct any survey or freely meet the local population, especially in AJK, which remains off limits to ordinary visitors. One possibility to visit AJK is by official invitation of the Ministry of Foreign Affairs, a visit which has to necessarily be approved by the Ministry of Interior, and limited to a few days (mostly up to three), while most of the *tehsils* (districts) are off limits. Another possibility resembles a typical Catch-22 case: one has to submit a No Objection Certificate (NOC) to the Ministry of Interior *in person*, while having a standard entry visa for 30 days, and the whole

process takes at least 30 days, with the decision being taken *after* the expiry of the visa. In the unlikely event of success in this case, most of the *tehsils* still remain off limits to the visitor. In both cases, wherever one goes, every step is strictly monitored by Inter-Services Intelligence (ISI) agents in plain clothes, the 'shadows'. The inseparable company of 'the angels' (so referred to in Pakistan) not only restricts freedom of movement but also determines whom one can meet and talk to as well as undermines the whole climate of direct face-to-face contacts with the local population who, in this environment of the suppression of free expression of opinions and surveillance, feel strongly intimidated, aware of the serious repercussions that may follow.

The Northern Areas (GB) were comparatively open to foreign visitors (who may have had to occasionally register locally), but in the wake of the Nanga Parbat massacre of 2012, the Ministry of Interior extended the policy of NOC to cover visits to GB,[5] a move strongly criticised by all residents in the region where 'seventy per cent of GB people depend on tourism to earn a livelihood as there is no other industry in the region', including by the Pakistan Association of Tour Operators (PATO) which 'said the move is tantamount to the "economic murder" of Gilgit-Baltistan'.[6] The requirement was partially eased in 2017, but not entirely. The Ministry of Interior contemplates 'that workers of NGOs and researchers will have to go through a process of additional scrutiny, before being allowed entry to the region'.[7] After 70 years under the tight control of the Pakistani armed forces and secret services which tolerate no dissent, and with no home-grown resistance comparable to the 1989 uprising in IaJK, the social ties of mutual support have not grown that would protect those expressing critical or dissenting voices, which explains why the citizens of PaJK exercise tight self-censorship in their dealings with outsiders and surveyors, in particular.

The extremely limited access to PaJK—in the sense of the entry to both the territory and minds—has negatively impacted *all* forms of data collection, not exclusively those directly related to HR, and renders the results of all surveys of opinion polls somewhat problematic. Some researchers never reach PaJK themselves and have to rely on a third source with unclear methodology or simply omit Kashmiri opinions.[8] For instance, in the project *The People's Peace* (2007–2009)[9] analysing the problems on both sides of the LoC, it seems that many of the results of the survey conducted in PaJK were extrapolations on the basis of very limited, fragmentary data 'due to lack of access to PaJK'.[10]

Given such context and the strong grip of Pakistani agencies, it is not surprising that there have been a mere handful of reports on the situation of HR and the monitoring of their observance and violations. One of the first reports, perhaps even the first one, now mostly of historical importance and naturally of a subservient character considering that it was prepared for Maharaja Hari Singh, was the 1944 *Administration Report* (ARJK, 1944), which dealt in detail with a number of issues across the entire territory of PSJ&K, some of which incidentally pertain to the representation of Muslims

in the state services, the freedom of press, economic security, heath care, education, access to justice etc. It took almost four decades before PaJK drew the attention of HR observers and world politicians, and that was mostly due to the 1989 uprising in IaJK, in which Pakistani agencies such as ISI, and Pakistan-sponsored and -trained militants, some of them recruited from AJK, were involved.

The general concern over the dramatic situation in J&K and atrocities committed by Indian forces also attracted attention to the desperate plight of the population across the LoC and the appalling state of HR there. The world gradually realised that even with the absence of thousands of civilians killed on annual basis in AJK, the position of the AJK population was unenviable. It was at the peak of the Kashmiri uprising when the International Commission of Jurists prepared a report on Kashmir (ICJ, 1995) that primarily covers IaJK (Chapters 4–8) and only partially PaJK (Chapter 9) on the basis of limited access to the territory and people. The conclusions have to necessarily be fragmentary in nature and treat PaJK in a cursory manner due to scarce first-hand data. The 1973-launched series of reports *Freedom in the World*, which are prepared by Freedom House, also include 'Pakistani Kashmir' (FH AJK) on annual basis since at least 2003: 'Pakistani Kashmir' is chronically reported as 'not free' with a very low ranking (5,6), well below 'Jammu and Kashmir (India)' classified as 'partly free' (ranking 4). Generally, the access to the territory adjacent to the LoC is practically barred to all researchers and HR rapporteurs.[11] Even if one obtains a NOC from the Ministry of the Interior to visit AJK or is an official invitee of the Ministry of Foreign Affairs on a visit to AJK, or has obtained a permission from senior government officials, including the Prime Minister or the President, the apparently consistently negative final decision, is taken by the Military GHQ at Islamabad.[12] For all practical purposes, it is the army that exclusively decides and controls who enters PaJK and in what capacity (and now similarly Khyber Pakhtunkhwa and Balochistan).

The moment that literally shook world opinion and captured international attention was 8 October 2005 when a devastating earthquake occurred resulting in a death toll of between 87,000 and 100,000 people and reduced most cities and villages of AJK to rubble. With people's lives and their homes in ruins, the natural catastrophe also shattered the firm grip of the Pakistani military, agencies and administration over the territory and Musharraf's government eased the restrictions on the outsiders' access to the territory. At least temporarily. Incidentally, the disaster presented terrorist outfits, such as the Lashkar-e-Taiba (banned by the government in 2002) operating under the name of a charity Jamaat-ud-Dawa (Jamāʿat ud-daʿwah; JuD), with a unique opportunity to gain on popularity. With the official consent and knowing the terrain well, they were the quickest to access the victims and provide them with help. This unexpected and forced thaw provided outsiders with access to the local population. They either came with emergency organisations and humanitarian aid workers or were

not barred by the authorities as strictly as before (which happened under pressure from Western governments to allow for rapid delivery of humanitarian aid). It resulted in the first more comprehensive and highly critical report on AJK prepared by Human Rights Watch in 2006 (HRW, 2006a). Its conclusions are confined to AJK and do not concern GB at all.

Since 1977 (covering 1976), the United States Department of State[13] has annually published *Country Reports on Human Rights Practices*, which also include Pakistan. These are generally quite insightful; however, they only cursorily mention PaJK and never focus on the territory. Likewise, Amnesty International has also produced a handful of incidental short reports, and they are mostly concerned with Pakistan in general, but the focus of the organisation has consistently been rather on IaJ&K with the Pakistani-administered side mostly neglected, with only causal mentions of PaJK. A relatively recent report *Pakistan-administered Kashmir (Azad Kashmir and Gilgit-Baltistan)* (COI, 2012) compiled by the Austrian Red Cross/ACCORD primarily 'collat[es] legally relevant information on conditions in countries of origin pertinent to the assessment of claims for asylum' and 'is not intended to be a general report on human rights conditions', albeit it does contain numerous relevant observations, such as on the level and type of HR violations (Chapter 3.4) and on HR abuses by the armed forces and non-state armed groups (Chapter 4.5). An independent survey project *The People's Peace*[14] also deals with both sides of Kashmir and partially bears on the issue of HR. The data for PaJK 'were collected in February 2009 by D3 Systems, Inc. of Virginia', not by the researcher himself.[15] It is not clear to what extent the local populations were directly surveyed. The issues discussed in these polls are, however, typically cautious and uncontroversial.[16] It took decades before the first two UN comprehensive reports on PaJK, prepared by United Nations High Commissioner for Human Rights, surfaced in 2018 and 2019 (OHCHR, 2018a, 2019). Conspicuously, no single independent report on the situation in PaJK, including HR and civil rights, has ever been drawn up locally, either in GB or AJK, for the simple reason that all such monitoring activities are banned and persecuted.

9.2 Legal framework

Currently both AJK and GB[17] enjoy a semi-autonomous status *superficially*, and even on paper this does not allow citizens to enjoy basic civil rights and representation. Pakistan keeps the territories it officially administers in a legal limbo and is, at least for now, interested in preserving their indeterminate status either defined as 'yet to be determined in accordance with the freely expressed will of the people of the State' (AJKIC, 1974) in the case of AJK or expressed through the promulgation that 'the Federal Government intends to give Gilgit-Baltistan the status of a provisional Province, subject to the decision of the Plebiscite to be conducted under the UN Resolutions'[18] in the case of GB.[19] At the same time, Pakistan schizophrenically treats

them as both structurally semi-autonomous, depriving the residents of basic rights which Pakistani citizens may (at least in theory) enjoy, and administratively, politically, economically and militarily fully dependent on Pakistan, without the trappings of even nominal independence.[20] Irrespective of how Pakistan solves the constitutional and legal structural interrelations, it has a legal obligation to provide for basic political rights and to respect HR both under Pakistani and international law as well as under the 'constitutions' Pakistan has imposed on the territories.

It is true that both sections of PaJK have a parliamentary form of government, but in both cases, the respective parliaments play a largely insignificant role, being fully controlled by Islamabad, and the heads of state are dependent on the Prime Minister and the President of Pakistan. Both territories have similar legal structures, with minor differences, and maintain a kind of 'personal union' *via* the person of the Prime Minister of Pakistan and the Islamabad-based Ministry of Kashmir Affairs and Gilgit-Baltistan (MoKGB), consisting entirely of non-locals. In the case of GB, the head of state is the governor, who does not have to be a native of GB, and who is appointed and dismissed by the President of Pakistan.[21] The regulations make the office fully dependent on Pakistan and subservient to its interests, and the legal structure does not make the head of the state accountable to the people at all. The office is a direct extension of the powers of Islamabad. Similarly, the head of AJK is the president, elected in the joint sitting of the Legislative Assembly and the AJK Council, the chairman of which is the Prime Minister of Pakistan, who effectively controls the process of election. In all important decisions, the heads of both territorial units have to act 'on the advice' of, viz. take orders from, Pakistani prime minister.[22] In AJK and GB, the government of Pakistan freely appoints all to-be elected functionaries and retains unrestricted powers to override any executive decisions or legislative provisions and other legal acts. In both territories, we find an unusual Pakistani-controlled two-tier bicameral structure of executive power, composed of (1) the Government headed by the chief minister (GB) or prime minister (AJK), controlled by Pakistan, and (2) the likewise Islamabad-dominated Council, the chairman of which is the Prime Minister of Pakistan, and which includes the Islamabad-based Federal Minister for Kashmir Affairs and Gilgit-Baltistan as well as the governor (GB) or the president (AJK) respectively, controlled by Islamabad. All important decisions remain in the hands of the respective Councils, the chairmen's decisions of which are irrevocable, and their validity cannot 'be called in question on the ground that it is not an order or instrument made or executed by the Council'.[23]

The role of the respective Councils, most members of which are either officers of Pakistan or are appointed by the Pakistani president or prime minister, is most peculiar in both territories. They bolster the almost omnipotent dominance of Islamabad, with both executive and legislative powers.[24] The extensive legislative powers of the respective Councils are listed

enumeratively in respective copy-paste-styled Third Schedules of the GB and AJK 'constitutions',[25] whereas everything else, politically or economically unimportant and trivial, falls under the jurisdiction of the respective Legislative Assemblies.[26] Both pieces of legislation[27] effectively concentrate all executive powers in the hands of the Prime Minister of Pakistan, who takes personally and single-handedly decisions, legislative and executive alike, in all crucial matters and exercises a direct and personal supervision of all important affairs, either himself or through people he nominates, or through 'his' respective Councils he controls. The legislative powers of the respective Legislative Assemblies and the executive authority of the Governments have to be within the limits specified by the Government of Pakistan and be in 'compliance with the Laws made by the Council and Pakistan laws'.[28] The Pakistani-Prime-Minister-chaired Councils may take over all powers 'either conditionally or unconditionally', which in practice means that the local governing bodies may be suspended at any time. The empowered 'right hand' of the Pakistani prime minister is the Federal Minister for Kashmir Affairs and Gilgit-Baltistan (MoKGB), appointed by the former and in charge of the Secretariat of the Council. The most important positions, including the office of the Inspector-General of Police, the Accountant-General and the Finance Secretary, are exclusively dominated by Pakistanis. Pakistan and Pakistani prime minister exercise total control of the electoral processes in both territories through a chief election commissioner either 'appointed by the Chairman of the Council'[29] or 'appointed by the President on the advice of the Council',[30] i.e. in both cases indicated by the Pakistani prime minister.

In addition, the Prime Minister of Pakistan exercises unrestricted control over the top appointments within the judiciary in both territories. In GB, the chief judge as well as other judges of top courts are 'appointed by the Chairman of the Council on the advice of the Governor',[31] i.e. by the Prime Minister of Pakistan 'on the advice' of his own appointee. The seat of the Supreme Appellate Court is Gilgit, but the Governor has the powers to change this,[32] which is an additional instrument of pressure. Similarly, the Chief Justice as well as 'each of the other judges of the Supreme Court of Azad Jammu and Kashmir' are 'appointed by the President on the advice of the Council',[33] i.e. on the advice of its chairman, namely the Prime Minister of Pakistan. The removal procedures of judges from their offices are prompted by the Chairman of the respective Councils. Within this framework, the judiciaries of PaJK are clearly dominated by the executive powers of the Pakistani prime minister. Accordingly, he can not only depose top office holders in the administration and judges in the judiciary, but also dismiss ministers, parliamentary secretaries and governments at will.[34] The entirety of the legislation affecting PaJK was drafted by the bureaucrats of the Government of Pakistan, in particular the Federal Ministries of Law and of Kashmir Affairs and Gilgit-Baltistan in Islamabad, and 'presented' to the people, without their actual involvement. Furthermore, the power

to amend laws is either directly or indirectly with the Prime Minister of Pakistan.[35] Even though formally Pakistan does not consider GB and AJK its integral territories, several Pakistani laws are enforced in the territories through, respectively, the Gilgit-Baltistan Council Adaptation of Laws Acts of 2010 and 2015, as well as the Azad Jammu and Kashmir Adaptation of Laws Resolution (AJKALR) of 1948, and the Azad Jammu and Kashmir Adaptation of Laws Acts (AJKALA) of 1959 and 1988.

Despite the fact that the whole legal framework has been imposed on both PaJK territories and Pakistani laws are also—albeit partially—applicable there, neither GB nor AJK can send their delegates to either chamber of the Parliament of Pakistan, where they could be in a position to represent their own interests and have a say in matters that concern them directly. Given this brazen asymmetry, the Rapporteur of the European Parliament Committee on Foreign Affairs expressed regret 'that Pakistan has consistently failed to fulfil its obligations to introduce meaningful and representative democratic structures' in both territories and that both regions enjoy 'no form of democratic representation whatsoever'.[36]

There can be no doubt that the establishment of local governments, legislatives and judiciaries was a step forward as compared to an earlier stage of Pakistan's unrestricted and informal rule over the 'no man's land'. However, the current legal mechanism is highly unsatisfactory and does not guarantee basic civil and HR. There can hardly be any doubt that, in terms of safeguarding any vestiges of PaJK territorial autonomy, which Pakistan declares it respects, such a legal model, in which the three separate powers (the legislative, the executive and the judiciary) coalesce in the hands of the Prime Minister of Pakistan and his appointees is nothing but a travesty of self-rule, autonomy and democracy, and rather resembles an authoritarian colonial rule over its dominions or a Mahārāja monarchy. In practice, the most important elements of the administration and all instruments of internal security are controlled by an alien army of Pakistani bureaucrats, in their majority recruited from Punjab.

Three additional legal instruments, widely criticised both in Pakistan[37] and worldwide,[38] are often used across PaJK to substantiate and justify a clampdown on political dissent and civil liberties, namely the 1997 Anti-Terrorism Act (ATA), the 2011 Actions (in Aid of Civil Power) Regulation (AACPR) and the 2016 Prevention of Electronic Crimes Act (PECA), popularly known as the 'cybercrimes law', which ban what they enigmatically define as an incitement to 'hatred and contempt on religious, sectarian or ethnic basis', one's 'own interpretation' of 'ideas, teachings and beliefs' and their communication 'without explicit approval of' the authorities.[39] ATA 'covers virtually all violent crimes',[40] but in addition, it prohibits the display, publishing or distribution of 'any written material which is threatening, abusive or insulting' as well as the 'possession [of any such] written material or a recording or visual images or sounds' etc. (ATA § 8), grants the 'power to enter or search' anyone suspected of possessing etc. of such

materials by 'officers of the police, armed forces or civil armed forces' (ATA § 10), also proscribes particular organisations, and makes any civil disobedience movement illegal and also potentially any public expression of opinion (ATA § 11).

PECA uses equally imprecise language and includes for instance such ambiguous ideas as 'dishonest intention' which is crucial in defining 'Offences and Punishments' (Chapter II). It stipulates punishments for any 'glorification of an offence' (§ 9), for 'hate speech' (§ 10A) and 'unauthorized use of identity information' (§ 14) defined so vaguely that almost any dissenting voice or view independent of the officially acknowledged mainstream may easily be classified as a terrorist offence. Consequently, through ATA 'crimes which have no nexus … to terrorism are routinely tried under this vague definition, in violation of international standards protecting individuals from abuses of power, including those relating to due process and fair trial',[41] and, in addition, activities which normally bear no criminal dimension at all may easily be classified as terrorist acts under ATA and PECA. As the UN Working Group on Arbitrary Detention notes, '[i]t appears that ATA has effectively created a parallel system of unique and exceptional procedures from arrest to custody, detention, prosecution, and sentencing of terrorism suspects by authorizing measures such as the denial of bail, enhanced police powers, arrest without warrant, and extended remand of suspects for up to 30 days, thereby increasing the risk of torture as a means of extracting confessions in police or other law-enforcement's or security forces' custody',[42] in all territories of Pakistan (the provinces) and administered by Pakistan (PaJK). Thus, the actual system of oppression and of HR violations in PaJK (as in Pakistan itself) is not merely accidental, unintended, inadvertent or rooted in the ignorance of actual legal regulations which are meant to protect the citizens, but is of a well-designed and systemic character and serviced by the law. In addition, as HRCP (2016: 5, 102) observes, 'cyber law sought to restrict the boundaries of criticism aimed at officialdom and allowed the authorities to intercept communications by the citizens, including journalists, political activists and rights campaigners'.

It would seem that, on the positive side, the creation of the National Commission for Human Rights through the Act XVI of 2012 was certainly a step to be appreciated. It was in compliance with the UN Paris Principles of 1992, which require state parties to establish government-independent National Human Rights Institutions (NHRI) with a broad constitutional mandate to protect and promote HR at the national level.[43] In this respect, Pakistan (beside Bhutan) was the last country in South Asia to constitute such a commission.[44] It took years before the body eventually emerged out of its actual nonexistence and dysfunctionality[45] and published its first two reports on the state of HR in Pakistan for the period 2015–2017 on 25 January 2019.[46] However, its reports do not cover the territories of PaJK at all and there is not even a single mention of them due to a widespread

practice of self-censorship of HR activists and journalists out of reasons specified below.

On top of the legal and administrative ramifications we find a batch of Pakistan's so-called 'lent officers', nowhere mentioned in the constitutional laws of PaJK, who effectively administer GB and AJK above the heads of and with no accountability to the populations and their representatives. They include, separately for GB and AJK, the Chief Secretary, senior most bureaucrat, Inspector-General of Police, Finance Secretary, Accountant-General etc. and may summon the local governments' representatives, such as prime ministers of GB or AJK, to the Gilgit-Baltisan House or the Kashmir House in Islamabad.

9.3 Extralegal framework

The legal framework, within which impunity and absence of any accountability on the part of power holders are embedded, is only one part of the nexus of utter disregard for civil and HR of the citizens of PaJK. Another root cause of the contempt for HR and democratic values is the same that has been plaguing the political life of the military-controlled Pakistan since its very beginnings,[47] namely the Deep State comprising army generals, ISI, Intelligence Bureau (IB), Federal Investigation Agency (FIA), Federal Security Force (FSF, operative between 1972 and 1977) etc. The ISI, other clandestine agencies and the military as the Deep State act with impunity and enjoy absolute immunity for past and ongoing HR abuses in the whole country not simply because they place themselves above the law[48] and no institution in Pakistan would dare prosecute them for their crimes, but also because, through their privileged position, they have forged such favourable laws that these both legalise their actions incommensurable with international standards and *ex lege* exculpate them from what should count as crimes. The powerful deep state can remove elected governments of Pakistan, can rig elections and bring to power new governments such as the present government formed by the military-backed political party Pakistan Tehreek-e-Insaf (PTI). PaJK is no exception to the rule, but the cancer afflicts the territories much more acutely. As the International Crisis Group aptly notes with respect to AJK, 'the AJK Council, headed by Pakistan's prime minister, formally has the power to override laws passed by AJK's elected legislature, and the AJK judiciary cannot review its decisions. However, though the Council is ostensibly all-powerful, it has very little authority in practice, because the military exercises almost complete control over the territory',[49] and the same applies to GB. Whereas the impact of the legal framework provides for unaccountability, corruption, abuse of power and disrespect for elementary democratic values as well as for human and civil rights, it is the impact of the deep state that is much more thorough-going, penetrating and toxic. The ubiquitous presence and intractable sway of the agencies also affects all aspects of political activities and the

ordinary lives of the citizens in a very complex and multilayered manner. As a result, people feel that they are under the continuous surveillance of ISI and other agencies.[50]

Whereas, within the legal framework, the Prime Minister of Pakistan has no formal *direct* powers to remove the President of AJK, and he can only indirectly do so (*via* the Federal Minister for Kashmir Affairs and Gilgit-Baltistan who oversees the process as a member of the joint sitting of the Legislative Assembly and the elected members of the Council that elects and may remove the president, and also *via* other clandestine means), the deep state can, with impunity, replace the AJK President at any time and outside of the legal framework. As is common knowledge to everybody in Pakistan, the actual centre of power of Pakistan lies outside of the legal framework and, in the case of PaJK, is to be found in an invisible maze of interconnections between the G-7/4 Sector of Islamabad where ISI Headquarters are located, just north of the Khayaban-e-Suhrwardy avenue and south-east of the Aabpara district, clearly visible from the Kashmiri Highway, and in the General Headquarters of the Pakistan Army in Rawalpindi. As Human Rights Watch noted, 'power in Azad Kashmir is exercised primarily through the Pakistani army's General Headquarters in Rawalpindi, just outside Islamabad, and its corps commander based in the hill station of Murree, two hours by road from Muzaffarabad. It is widely understood in Pakistan and privately admitted by virtually all politicians from Azad Kashmir that the corps commander in Murree is known to summon the Azad Kashmir prime minister, president and other government officials regularly to outline the military's views on all political and governance issues in the territory'.[51] Since the time it was written nothing has changed.

Of the AJK Presidents,[52] Sardar Khurshid Hassan Khurshid 'was forced to resign by a mid-level police official' on 5 August 1964 'and later jailed in Palandari and Dalai Camp'; Sardar Mohammad Abdul Qayyum Khan 'was suddenly arrested' in 1974 'by a mid-level official of the Federal Security Forces in Muzaffarabad and subsequently dismissed' on 16 April 1975,[53] and remained 'interned … for one and a half year',[54] being succeeded by Sardar Muhammad Ibrahim Khan on 5 June 1975, who in turn was removed from office by General Muhammad Zia ul-Haq on 31 October 1978 and replaced by Brigadier Muhammad Hayat Khan. On 25 August 2001, General Musharraf nominated Major-General (retd.) Sardar Muhammad Anwar Khan, who had just retired from the army, to the office of the President, imposing his decision on the joint sitting of the Council and the Legislative Assembly (whose 'members … had little or no idea who Anwar was'[55]) and despite the fact that the regulations barred him from taking political office before a lapse of two years from his military retirement.

As for AJK governments and prime ministers, Nawaz Sharif dismissed Raja Mummtaz Hussain Rathore on 5 July 1991 after he had been first transported to Islamabad in a helicopter and forced to hand over his resignation. Soon after, on 9 July 1991, Sardar Qayyum re-emerged in Kashmiri

politics as the prime minister as a nominee of the Pakistani army. During Benazir Bhutto's tenure as Prime Minister of Pakistan, she pushed a Kashmiri extension of her Pakistan People's Party, Azad Kashmir People's Party (AKPP), to power and Sultan Mehmood Chaudhry to the office of the AJK Prime Minister. General Musharraf appointed Sardar Attique Ahmad Khan to the office of prime minister on 24 July 2006, and his name is associated with the idea of 'military democracy' which he explained as, 'simply put, smooth civil-military relations. It is a merger of defence and democratic forces. We should have the best, complete, and closest possible ties between the government and military'.[56]

Since the 1950s, the Pakistani deep state has diametrically reversed the obvious subordination of the apparatus of state violence (as the military extension of the deep state, comprising the army, the paramilitary, security forces, police, intelligence agencies) to the civilian executive who, for all practical purposes, are now answerable to the army and intelligence services, the actual centre of all power. This has grave consequences for PaJK. The deep state's control of AJK and GB with its apparatus of state violence runs top-down: from the heads of the states, including their nominees, down to all other positions and offices in the territories, affecting dismissals and arrests. This influence is pervasive and extends to political life, administration, the judiciary, economy etc. As Freedom House observes, 'federal intelligence agencies are also deployed in the territories and wield considerable power over local elected representatives and officials, … surveillance of political activities is the norm',[57] and, 'as in Pakistan, federal military and intelligence agencies also play a powerful role in governance and policy-making'.[58] With such a reversed legal subordination and constitutional relationship with Pakistan, the rights and protections available to Pakistanis under the Pakistan Constitution are beyond the reach of the citizens of PaJK. Given such a formal (constitutional) and informal (unconstitutional) dominance by the army and intelligence services, it comes as no surprise that most abuses of power, curbs on civil rights and violations of HR cannot happen without the causal agency, direct involvement and knowledge of the army and intelligence services.

The profound significance, pivotal role and supremacy of the army and the intelligence services in Pakistan is officially justified through the reference to the mixed bag of core values of *raison d'état*, national security, the country's sovereignty, defence, national interest, economic development, national honour and pride, stability and solidarity with the *Ummaḥ*. First, civilian politicians and governments are corruptible, unaccountable and, instead of representing the interests of the whole Pakistani nation, speak for their narrow groups of interests, and therefore, they have to be occasionally disciplined, reprimanded and brought onto the right path. Second, Pakistan came into existence as a sanctuary for all Muslims of South Asia, persecuted, repressed, abused and exploited by the Hindus, who run

the inimical state of India. Therefore, India remains the perennial foe of Pakistan who is interested in dismantling the project of the *Qāʾid-e Aʿẓam*, the 'Great Leader' incarnated in the person of Muhammad Ali Jinnah. PaJK, castrated of its remaining Muslim territories occupied (as Pakistan consistently describes it) by India, is at the forefront of the battle and special regulations have to apply there for these very special reasons. Supported by the (completely unfounded and harmful) two-nation theory, Pakistan is tempted to view, whenever it can be politically profitable, all the Kashmiri population of South Asia (except its former Eastern wing, Bangladesh of course) as its own, for all Muslim brethren naturally belong to Pakistan, their true homeland created for them as their promised land. Therefore, no real question arises regarding 'the future status of the State of Jammu and Kashmir yet to be determined in accordance with the freely expressed will of the people of the State'[59] in the true sense, because all Kashmiris, being Muslim, simply represent one nation, as opposed to the nation of the Hindus. Hence, they and their interests have to be *somehow* protected, be it ineptly. Enjoying the status of landlocked backwaters for some time after the Partition, the GB region has gained in importance only gradually, as Sino-Pakistani relations have progressively evolved through various stages of military assistance, strategic alliance, economic co-operation and 'all-weather friendship'. GB is Pakistan's only gateway to China, which alone raises the territory to strategic importance. There is no other connecting route possible, even if Pakistan gained access across IaJK. With the China-Pakistan Economic Corridor (CPEC), the importance of GB has increased even more. With this its role as an economic asset also rose for the military.[60] In sheer strategic and economic terms, the territory is absolutely *uncedeable*. The army and the intelligence services declare themselves obliged to guard the passage, as no one else can fulfil that role.

As is well known, the whole region of the former PSJ&K is one of the most heavily militarised regions in the world. While we can make estimates as regards the number of all the Indian armed forces, including the paramilitary, the intelligence services etc., in IaJK, which can be assessed as high as 850,000 in August 2019 (with the ratio of armed personnel to civilians a staggering 1:16),[61] it is impossible to venture any similar estimate of Pakistani armed forces[62] stationed in PaJK, for Pakistan never releases such data and the tight control on the ground under the pretext of national security makes the collection of the data considered sensitive highly hazardous. Considering that the entire active personnel of Indian Armed Forces numbers approx. 1.4 million,[63] and at least one-third of it (481,576 troops) contributes to the total of 850,000-strong India's apparatus of state violence stationed in IaJK, similarly, a proportionally high number (approx. one-third) of the total Pakistan Armed Forces of approx. 650,000[64] (of which 70%, or *c.* 455,000, are anyway deployed at or near its eastern border with India), viz. approx. 180,000–200,000 troops can be estimated to be stationed in AJK. Including additional number of reservists, paramilitary[65]

and intelligence service personnel expected to be installed across the LoC, this would yield an armed services to civilian ratio in AJK somewhere between 1:18 and 1:14, resembling the proportions in India. Whatever the actual numbers of Pakistan's apparatus of state violence deployed in PaJK, their special presence and expenditure needs special justification as staunch guardians of the state's core values.

The Kashmir cause and its advocacy is a comfortable pretext for Pakistan rather than a real concern, for 'while the army does not want an escalation of tension or the eruption of war with India, it does not intend to let go of the issue when this would reduce the military's significance and alter its image as the nation's guardian, especially when there is no indication from India that it is willing to resolve the [Kashmiri—P.B.] issue by agreeing to any minor or major territorial changes'.[66] The military extension of the deep state is there in Kashmir and would remain, irrespective of a resolution of the Kashmir issue.

Indeed, the intelligence services and the military of Pakistan can be treated as a self-perpetuating dominion that requires the state of Pakistan for its own subsistence, rather than reverse, and has turned itself into what Ayesha Siddiqa (2007) aptly terms a Military Incorporated Company (Military Inc.), with its extensive budget that comprises the official, recorded defence budget and the so-called *Milbus* (military business), or 'military capital that is used for the personal benefit of the military fraternity, especially the officer cadre, but is neither recorded nor part of the defence budget'.[67] After the 1958 *coup d'état*, 'it was necessary for the military to establish domination over defence and foreign policy issues because the defence budget was a major share of the national expenditure, and swallowed about 68 per cent of the central government's revenues'.[68] The influence of the military expanded and 'military expenditure has always received top priority, and this drive to commercialise military areas is a case of economic predatoriness rather than a real necessity'.[69] It now comprises an extensive economic network of various companies, some of them operating specifically in PaJK, such as Frontier Works Organization or Special Communication Organization.[70] The synergy of defence priorities, political clout, guardianship primacy of *raison d'état* and other state core values, economic sway and corporate welfare make the military and the intelligence services all-powerful, not answerable to any court or political supervision. And it is this political, legal and economic omnipotence that guarantees complete impunity to the deep state.

Notes

1. See: Balcerowicz–Kuszewska (2022b: §§ 3–7).
2. Not to be confused with its two namesakes: the Institute of Kashmir Studies (IKS), established in 1986 as a Research Institute at the University of Azad Jammu and Kashmir, Muzaffarabad (IKS-UAJK), or with the Institute of

Kashmir Studies (later renamed as UNESCO Madanjeet Singh Institute of Kashmir Studies, UMIKS) of the University of Kashmir, Srinagar, established in 2007, which also publishes *The Journal of Kashmir Studies* (editor G.M. Khawaja). Most surprisingly, the staff of the latter institution and the editors of the journal appeared to be completely oblivious to the existence of the *actual* Institute of Kashmir Studies in 1990s, which they replaced in name, stamping out its actual existence and importance from public memory.

3. About two dozen of the publications have been retained in my possession, including: *Kashmir under Torture* (Report no. 2, 1993), *Slaughter in Sopore* (Report no. 2, 1993), *Lal Chowk on Fire* (Report no. 4, 1993), *Unabated Arson and Agony in Kashmir* (Report no. 5, 1993), *'Catch and Kill': A Pattern of Genocide in Kashmir*, Vol. I (Report no. 6, 1993), *Repression in Kashmir Moves On* (1993), *Kashmir Cries for Justice* (Report no. 7, 1994), *Massacres in Kashmir: A Special Report on Three Massacres at Bijbehara, Sopore & Kupwara in Kashmir by Indian Forces* (Report no. 9, 1994), *The Siege and the Massacre* (Report no. 11, 1994), *'Catch and Kill': A Pattern of Genocide in Kashmir, A Bestial Method of Breaking the Will of a People*, Vol. II (Report no. 14, 1994), *Kashmir and the Wailing Vale* (Report no. 19, 1995), *Tearful Summer in Kashmir: A Report on Human Rights Violations Committed by the Indian Forces During the Months of June & July, 1993* (1994), *'Catch and Kill': A Pattern of Genocide in Kashmir, A Bestial Method of Breaking the Will of a People*, Vol. IV (Report no. 31, 1998), *Carnage in Kashmir* (Report no. 23, 1996), *1996 Lok Sabha Elections in Kashmir (Under the Shadow of Gun)*, Report no. 24 (1996), *The Bruised Valley* (1997), *Trials and Tribulations in Kashmir* (Report 28, no. 1997), *Counter-Insurgency in Kashmir*, Vol. II (Report no. 34, 1998), *Turbulent Autumn in Kashmir* (Report no. 35, 1998). These publications have been banned in IaJK, and there have been reported cases of torture for the possession of any of the booklets. According to the Institute of Kashmir Studies, the number of the dead between 1989/1990 and 1998 lies between 40,000 and 50,000.
4. Tanveer Ahmed (2017), himself a state subject (first class).
5. Mir (2017), Nagri (2017). For anyone willing to visit GB, 'it took foreign tourists two or three months to obtain Pakistan's visa and they were issued visa only after getting NOC from the interior ministry', Nagri (2017).
6. Nagri (2017).
7. GB (2017-05-11). There are reports that the Ministry of Interior has officially lifted the NOC requirement to visit both GB and AJK altogether, see PT (2019-01-26), GNA (2019-03-26). However, according local reports, especially from AJK, the whole process is arbitrary and some people are allowed in while others are not. The authorities are particularly wary of people who write or record their experiences while visiting PaJK.
8. E.g., WO (2008).
9. Irwin (2008, 2009, 2012).
10. Irwin (2012: 202, n. 84).
11. HRCP (2004: 11).
12. HRCP (2004: 11), but also based on first-hand personal experience.
13. Available at <www.state.gov>, <www.refworld.org> and <https://archive.org>.
14. Irwin (2008, 2009, 2012), <www.peacepolls.org>.
15. Irwin (2009: 1).
16. Such as for instance the most significant problems faced by the population in 'Table 5.14. The "problems" faced by the people of PaJK in order of significance' and 'Table 11.9' (Irwin, 2012: 79, 202) and Irwin, 2008: 6): Poor quality

of education (42%), Independence will not bring safe borders with Kashmir's neighbours (41%), India and Pakistan talking for 20 or 30 years with no result (41%), High levels of unemployment (38%), The political leadership of Kashmir is divided (32%), Denial of democratic rights (32%).

17. See: Balcerowicz–Kuszewska (2022b: §§ 3–7).
18. GBESGO (2009) and GBGR (2019), *Preambles*.
19. The first time when the promise to make GB (NA) a province of Pakistan, with its own legislative assembly, was in 1973 under Zulfiqar Ali Bhutto as President, See Dani (1991: 426).
20. In the light of the analysis of the legal status of the territories in Chapter 1, I see little justification of the claim that 'AJK has the trappings of a sovereign state, but it is only nominally independent' (ICG, 2010: 7) and repeated in UN report (OHCHR, 2018a: § 143), for even nominally neither AJK nor GB are independent. This was rectified in a later report: 'in Pakistan-administered Kashmir, Islamabad gives the local government only the trappings of sovereignty, without any meaningful authority' (ICG, 2012: 19).
21. GBESGO (2009, Artt. 20(1), 20(4)).
22. See also HRCP (2010: 9–10).
23. Identical wording in: GBESGO (2009, Art. 33(17)) = GBGR (2019, Art. 54(17)); AJKIC, Sec. 21(12).
24. GBESGO (2009, Art. 33(12)) = GBGR (2019, Art. 54(12)); AJKIC, Sec. 21(7), 31.
25. GBESGO (2009, Art. 47(2)(a)) = GBGR (2019, Art. 68(2)(a)); AJKIC, Sec. 31(2)(a).
26. GBESGO (2009, Art. 47(2)(b)) = GBGR (2019, Art. 68(2)(b)); AJKIC, Sec. 31(2)(b).
27. GBESGO (2009, Art. 33(12)) = GBGR (2019, Art. 54(12)); AJKIC, Sec. 21(7).
28. GBESGO (2009, Art. 31) ≈ GBGR (2019, Art. 49) ('Pakistan laws' omitted); AJKIC, Sec. 19.
29. GBESGO (2009, Art. 82) = GBGR (2019, Art. 106).
30. AJKIC, Sec. 82.
31. GBESGO (2009, Artt. 60, 69)/GBGR (2019, Art. 82).
32. GBESGO (2009, Art. 64(2)) = GBGR (2019, Art. 87(2)).
33. AJKIC, Sec. 42.
34. GBESGO (2009, Artt. 24, 26)/GBGR (2019, Artt. 46, 52); AJKIC, Sec. 56.
35. GBESGO (2009, Art. 93)/GBGR (2019, Art. 124) (via the Pakistani President); AJKIC, Sec. 33.
36. EP (2007: §§ 14, 17, 19); see also OHCHR (2018a: § 142).
37. For instance, the provisions of ATA have been criticised by the Institute Of Strategic Studies in Islamabad, which is otherwise closely link to the Pakistani government and funded by the Ministry of Foreign Affairs: 'A fundamental flaw within the ATA is the vague and overly broad definition of "terrorism" under its provisions… This allows offences bearing no nexus to militancy and proscribed terrorist networks to be tried under its provisions'; 'As many as 80% of those convicted of terrorism-related offences under the ATA were accused of offences that had nothing to do with terrorism'; '86.3% of those who received death sentences from Pakistan's ATCs were convicted of crimes with little or no relation to terrorism' (ISSI, 2018-08-31).
38. E.g. JPP (2014: 10): 'The fact alone that, as of July 2014, there were over 17,000 pending "terrorism" cases—adding to the 800+ "terrorists" already on death row—strongly indicates that the Anti-Terrorism Act is being greatly and inappropriately overused'; 'the data suggests that 86.3% of all those sentenced to death by the anti-terrorism courts had nothing to do with terrorism as that

term is commonly understood.' However, in this chapter in the report of JPP (2014), PaJK was excluded due to the lack of unrestricted access to the region. See also the UN criticism (CCPR, 2017, Art. 21–22.)
39. ATA § 6(2); cf. PECA § 10A.
40. UNWGAD (2018: 1).
41. UNWGAD (2018: 2).
42. UNWGAD (2018: 1)
43. See, e.g., the European Network of National Human Rights Institutions, ennhri.org.
44. India established its NHRI in 1993, Sri Lanka in 1996, Nepal in 2000, the Maldives in 2003 and Bangladesh in 2008.
45. ICJ (2014).
46. NCHR (2015-16) and NCHR (2017).
47. See, the opinion of Brig. (ret.) A.R. Siddiqi that 'the use of the tribals that had gone into Kashmir to take control of the Kashmir valley led to the war, thus sealing the fate of Kashmir and turning Pakistan into a military-dominated state' (Siddiqa, 2007: 63).
48. AHRC (2010: 46), COI (2012: 55).
49. ICG (2012: 19–20), see also OHCHR (2018a: § 143).
50. HRCP (2004: 10–11).
51. HRW (2006a: 29).
52. See HRW (2006a: 29–31), and Puri (2012: 42–46). Cf. Siddiqa (2007: 83–111).
53. HRW (2006a: 29–30).
54. Naqash (2015-07-12).
55. HRW (2006a: 30).
56. Faiz (2014).
57. FH AJK (2015/2016), see also OHCHR (2018a: § 15, 145).
58. FH AJK (2018/2019).
59. AJKIC, *Preamble*.
60. See Siddiqa (2007: 112–128). *For instance military-controlled Frontier Works Organization constructed the Karakoram Highway connecting Pakistan and China*.
61. See: Balcerowicz–Kuszewska (2022a: § 18.4).
62. Including the army, paramilitary forces, intelligence and Pakistan-sanctioned and -sponsored militants.
63. 1,395,100 in 2018 according to IISS (2018: 260).
64. 653,800 in 2018 according to IISS (2018: 291). According to Jane's Information Group, the total strength of all Pakistan Armed Forces stood at 590,000 (520,000 the Army, 45,000 Air Force and 25,000 Navy) in 2011 (COI, 2012: 45), i.e. roughly one-third of Indian Armed Forces.
65. 'Apart from the regular forces, there are 500,000 reservists intended as individual replacements and reinforcements. According to Jane's [Information Group—P.B.], reservists receive only "minimal" training for a triennial three week period but are drawn from recent regular service-leavers, who "remain liable for service to the age of 45 and have readily-employable skills." (Jane's, 10 August 2011)' (COI, 2012: 45).
66. Siddiqa (2007: 98).
67. Siddiqa (2007: 1). For the extent and cost of Milbus, see Siddiqa (2007: 219–242).
68. Siddiqa (2007: 71), see also Jalal (1991: 94).
69. Siddiqa (2007: 191).
70. Siddiqa (2007: 116–117).

10 The structure of abuse

Piotr Balcerowicz

The population of Pakistani-administered Jammu and Kashmir (PaJK) falls victim to a range of abuses, including what can be called a *four-pack* of enforced disappearances, illegal detentions, torture and extra-judicial killings. It is the constitutional/legal provisions *imposed* on Pakistani-administered Kashmir by the Pakistani authorities that makes such violations possible. The scale of human rights (HR) violations perpetrated by Pakistan and the sheer number of killings, serious injuries, rapes, enforced disappearances, mass graves, electoral fraud and political repression seems comparatively lesser than in India. However, the suppression of a wide range of political rights and civil liberties and the abuse of an other human rights runs much deeper in Pakistani-administered region. The chapter discusses different categories of HR violations there. The gravity of intimidation is so high that the people lose the will to protest against their plight or even to make complaints. In the case of some of HR violations, such as restrictions on freedom of religion and belief of minorities, the local population often is seen to cooperate. The people of PaJK are consequently kept hostage as a kind of vexatious and largely dispensable appendage to the territory which is the prime asset to the civilian-military rulers based in Pakistani Punjab.

It is sometimes claimed that 'the human rights violations in this area [of PaJK] are of a different calibre or magnitude and of a more structural nature'[1] as compared to Indian-administered Jammu and Kashmir (IaJK). Albeit not necessarily inaccurate, such a conclusion has to be viewed with caution. With respect to the visible omnipresence of the armed forces and the intelligence services, the sheer number of killings, serious injuries (e.g. with pellet-firing shotguns) and rapes, unmarked mass graves, enforced disappearances, extendable curfews, regular blockades of the Internet and cut phone lines, electoral fraud and political repression, India need not worry about losing its inglorious leadership position. However, when it comes to a number of other human rights abuses, we may discover that, unlike in Indian-administered Jammu and Kashmir (IaJK), Pakistan prevents the exercise of a range of other human and civil rights. What we find below is not a comprehensive report on human rights violations perpetrated by the Islamic Republic of Pakistan, its government and administration, the deep

DOI: 10.4324/9781003196525-12

state, including the military, the intelligence services, clandestine agencies and government-supported and government-tolerated militants, but rather a survey of the major types of violations encountered there, their nature and their context.

10.1 Denial of political rights

A range of human rights that concern civil and political spheres, officially accepted by Pakistan through the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR), have consistently been denied in Pakistani-administered Jammu and Kashmir (PaJK), and these include the right to self-determination (UDHR, Art. 1; ICCPR, Art. 1), the right to take part in the government of one's own country, viz. the right to political participation, including the right to vote and to be elected, to take part in the conduct of public affairs, to have access, on general terms of equality, to public service in one's country (UDHR, Art. 21; ICCPR, Art. 25), the right to freedom of peaceful assembly and association (UDHR, Art. 20; ICCPR, Artt. 21, 22) or the right to freedom of thought and conscience and the right to hold opinions without interference, including political views (UDHR, Artt. 18, 19; ICCPR, Artt. 18, 19).

With the upper hand in all crucial decisions of a political, economic or social nature concerning PaJK remaining with the political centre in Islamabad, and in particular with the Government of Pakistan and the Prime Minister of Pakistan as well as with Minister for Kashmir Affairs and Gilgit-Baltistan (MoKGB), the basic human right to have a genuine government that is elected by and that represents the interests of the population has been consistently denied by Pakistan since 1947, and this dominance is part and parcel of the legal-constitutional setup of both Azad Jammu and Kashmir (AJK) and Gilgit-Baltistan (GB).[2] This denial of political rights does not only concern the fact that Islamabad-appointed politicians, alien to the region, rule the populations of AJK and GB but also how the respective legislations of AJK and GB are made: these are always imposed from the top down onto the region, with no consultation with the populations directly concerned by the laws, either as orders or bills of the President of Pakistan and the Government of Pakistan.[3]

A stark instance of the Pakistani political centre's disdain for the people of PaJK is the last decade of the lawmaking in GB. First, the 2009 Gilgit-Baltistan (Empowerment and Self-Governance) Order (GBESGO 2009) was made by the Government of Pakistan, urged on by the Supreme Court of Pakistan,[4] with no prior consultations with the people of GB whatsoever. A decade later, in 2018, the President of Pakistan issued a new order, the Government of Gilgit-Baltistan Order (GGBO 2018), with the protesting local population left out of the discussions on the laws that directly concerned them and their fate.[5] The Order was duly implemented by the Government

of Gilgit-Baltistan, effectively controlled by the Prime Minister of Pakistan as Chairman of GB Council. This met with popular protest in which mainstream political parties joined hands with pro-independence groups and civil society organisations, all of whom demanded full democratic rights and representation.[6] An expression of the dissatisfaction with the Pakistani President's new order and its illegal status in view of the laws of GB was the ruling of the Gilgit-Baltistan Supreme Appellate Court that suspended the controversial (GGBO 2018) on 20 June 2018.[7] In addition, the Court judges 'expressed displeasure when they were informed that the Government of Gilgit-Baltistan Order 201[8] had already been published in the Gazette of Pakistan',[8] while the case was still being debated by the Supreme Appellate Court. Citing the contempt of court, the Jury summoned the Prime Minister of Pakistan, as the Chairman of GB Council, and MoKGB, to appear in the court on 27 June 2018, which was ignored by the prime minister. In a further step, the Supreme Court of Pakistan, Islamabad, overruled the verdict of the Supreme Appellate Court of Gilgit-Baltistan and restored (GGBO 2018) in a slightly modified version of the Gilgit-Baltistan Governance Reforms (GBGR 2019) on 17 January 2019. Despite wide calls, including those from human rights activists and GB politicians, upon the President of Pakistan to defer the enforcement of the controversial laws 'pending necessary consultations with the people of Gilgit-Baltistan',[9] it was immediately implemented by Pakistan's MoKGB without any consultations.[10]

The most important offices in PaJK are either direct extensions of the federal government in Islamabad, e.g. the Prime Minister of Pakistan being automatically the Chairman of the GB and AJK Councils, or the local governments either directly or indirectly appointed by Islamabad. Under such constitutional circumstances, there is no question that the important provision that the authority of government should express the will of the people (UDHR, Art. 21.3) could not be respected. Further, the legal-constitutional framework enforced on PaJK by Islamabad makes the right to equal access to public services in one's own country (UDHR, Art. 21.2) impossible, with all most important offices either directly reserved for Islamabad politicians or Islamabad-appointed officers or indirectly monopolised by Islamabad. Considering the constitutional framework, the disempowerment of the region and the default exclusion of the large political spectrum that is unfaithful to 'the ideology of Pakistan' from contesting elections and participating in public debate, any real possibility of enjoying the right to have periodic and genuine elections (UDHR, Art. 21.3) is unattainable for the PaJK population.

We can also observe that the realisation of the fundamental right to self-determination, being 'an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights',[11] is not respected in the case of the Pakistani-administered territories. The legislation applicable to both territories of PaJK is a case of denied autonomy, in which the residents of GB and AJK

are neither citizens of Pakistan nor of their own state and live under constitutionally and politically impoverished circumstances of civil abnegation. The people of the PaJK region cannot exercise their basic political rights such as the right to vote in federal elections and consequently have no representation in the Pakistani Parliament, which has a direct impact on their lives. As a result, PaJK residents are deprived of any opportunity to exercise influence on the policies that concern their political and social activities and economic development. They cannot exercise their right to control their finances (budget) through their elected representatives either and are completely excluded from Pakistani constitutional institutions that coordinate relations between the capital of the Pakistani federation and its units and are meant to assist in resolving potential disputes, such as the Council of Common Interests[12] the National Economic Council[13] or the National Finance Commission.[14] All important matters, such as the phrasing and shape of their direct legislations, or 'constitutions',[15] are 'presented to', or imposed on them by the Pakistani President and Prime Minister, and all other decisions of vital importance are taken by the Federal MoKGB and the federal civil service, who are in full control over the two local governments' all operations.[16] The population has no involvement and influence on the decision-making process. The relation of the centre and the PaJK territories resembles that of a *zamīndār*, or an aristocratic landowner, bestowing his irrevocable will upon his peasant subjects.

In legal terms, superior courts in PaJK cannot annul laws that are not in conformity with fundamental rights (CIRP 1973, Artt. 7–28), unlike in Pakistan.[17] Any decision of the local courts may be overridden by the Supreme Court of Pakistan, as was the case with the unconstitutional appointment of Riaz Akhtar Chaudhry as AJK chief justice in 2006, successfully challenged in the AJK Supreme Court,[18] which argued that 'the Supreme Court of Pakistan has no jurisdiction … regarding appointment of judges of superior courts of AJK'. The order was subsequently overruled by the Supreme Court of Pakistan in accordance with the politically established and regularly applied principle.[19] On the other hand, a number of the laws of Pakistan that, for instance, protect from discrimination and abuse are not applicable in PaJK to the same extent as in the (other) parts of Pakistan, because not all Pakistani laws are extended to PaJK and local 'constitutions' do not regulate such cases.[20] Similar to the regulations of AJK Interim Constitution (AJKIC),[21] the GB laws do 'not guarantee the right to a fair trial, protection against double punishment and self-incrimination, the right to information and right to education'.[22] It is only recently, in January 2019, that a positive change could be observed, at least on paper, when the right to fair trial, protection against retrospective punishment, double punishment and self-incrimination, the right to information or the right to education were introduced to the local laws,[23] besides other welcome provisions, such as the equality of citizens, non-discrimination in respect of access to public places, safeguards against discrimination in services, the

preservation of language, script and culture,[24] most directly copy-pasted from the AJKIC,[25] which has no safeguards as to the preservation of language, script and culture.

Even though the constitutions of PaJK speak of a general 'freedom of association',[26] nevertheless a number or regulations in PaJK explicitly bar all those who do not support 'the ideology of Pakistan'[27] or 'the ideology of the State's accession to Pakistan',[28] and all acts of 'propagat[ion] against, or tak[ing] part in activities prejudicial or detrimental to the ideology of Pakistan/of the State's accession to Pakistan' are explicitly prohibited and prosecuted'.[29] This ban extends to individual persons, political parties, associations, NGOs, media, administration officers etc. There are countless reported cases of individuals, activists, journalists, police officers, administrative workers etc. who are subject to various kinds of persecution, ranging from intimidation, loss of or exclusion from employment in state-dependent establishments, travel bans, expropriation of property, house or land, beatings, arrests, prolonged detentions without trial, incarceration, torture, enforced disappearance and death (often resulting from torture). One of the most publicised cases of political murder was the gunning down, believed to be by ISI agents, of Sardar Arif Shahid, a prominent human rights defender and active writer, in front of his house in the garrison city of Rawalpindi on 14 May 2013. He had previously been repeatedly arrested and threatened by ISI for his criticism of Pakistan's 'occupation' of PaJK and treatment of it as its 'colony', of Pakistan's training and sending militants across the Line of Control (LoC), and for his advocacy of independence for all Kashmir.[30]

Unarmed protesters are also killed in the region, and not necessarily just those who advocate genuine self-determination for PaJK. This usually happens whenever larger crowds gather and the Pakistani army and ISI deem matters to be flowing out of their control: then shots are fired. One recent example is that of Naeem Bhat, a Jammu Kashmir Liberation Front (JKLF) activist, who joined large demonstrations near Hajeera (Poonch, AJK) to condemn exchanges of fire across the LoC, and was shot on 16 March 2018 by Pakistani clandestine agencies, always monitoring such events, and succumbed to his wounds on 21 March 2018.[31]

The last few years have seen an upsurge of political involvement by Kashmiri citizens who have been joining recurrent protests to demonstrate their distinct identity and strong national sympathies, ranging from autonomy and self-governance to outright independence, which has in turn led to massive political repression by the Pakistani army and ISI. In September 2015, GB lawyers called on the Pakistani government 'to make special "temporary" changes in its constitution to ensure the region's representation in "all constitutional bodies of the country" in order to "maintain … the region [of GB—P.B.] linked to the Kashmir issue, while also giving it the long denied rights of self-rule"'.[32] The calls were followed the first large-scale pro-independence and anti-Pakistani demonstrations in Gilgit, Muzaffarabad and Kotli on the so-called Black Day on 22 October 2015 (to

mark the invasion of the territory by Pakistani troops on 22 October 1947), in which people gathered, both men and women, demanding *āzādī* ('freedom, independence') from 'purchasing immovable property' the packed streets. In response, Pakistani forces used brutal force to quell the rallies, beating up and arresting scores of demonstrators.

The incessant wave of protests of 2019 in AJK started with what was an expression of the unity with the Kashmiris across the LoC. The demonstrators massively objected to Narendra Modi's dismantling of Jammu and Kashmir (J&K)'s autonomous status in August 2019 (e.g. 27.08 in Muzaffarabad) with the slogans 'Quit Jammu Kashmir' and continued through September and October. In response, the panicked government resorted to different methods to quell the unrest and brought police and military reinforcements from Punjab (reportedly 'up to 3,500 members of the Punjab Constabulary (PC) and possibly Rangers')[33] and busloads of tribal Pathans from Khyber Pakhtunkhwa (KPK).[34] Despite these measures, the rallies eventually transformed into a massive Freedom March towards the LoC in October 2019, organised by Tanveer Ahmed and other AJK activists of the Civil Society Forum and Jammu and Kashmir People's National Alliance (JKPNA; established in 2019), when over a thousand vehicles and more than 10,000 citizens of AJK demonstrated in Muzaffarabad and set off towards Srinagar.[35] Over the period of the demonstrations, the government arrested scores of activists for pasting posters and distributing pamphlets related to the Freedom March and the Quit Jammu Kashmir movement and for their involvement in the protests. Most of the activists now face trials. Journalists have also protested in large numbers. For instance, on 22 October 2019, the police killed two demonstrators and injured 80 during a 4,000-strong pro-freedom rally in Muzaffarabad called by JKPNA and raided Muzaffarabad's Central Press Club, which led to furtherer protests.[36] The demands of the protesters and JKPNA included an end to division of the State of Jammu Kashmir, the formation of a joint constituent assembly, including Pakistani-administered AJK and GB, the reinstatement of the State Subject Rule (SSR; see SSDN) in all parts of Jammu Kashmir (both IaJK and PaJK), the release of all prisoners of conscience and an end to exchanges of fire across the LoC. The demonstrations continued into 2020 but gradually receded due to the Covid-19 pandemic by the summer. On 21 August 2020, one of the prominent faces of the protests, Tanveer Ahmed was arrested, being accused of removing a Pakistani flag from Maqbool Bhat Shaheed Square in the town of Dadyal (AJK), not a part of Pakistan under international law. Thereafter, Ahmed was tortured under detention by Pakistan's agencies. As of February 2021, he has unlawfully been held in prison, while his all bail applications have been refused for political reasons.[37]

News outlets, including the printed and Internet media, which do not comply with 'the ideology of Pakistan' or report on the corruption, malfeasance and negligence of local authorities, are regularly suspended or banned. This results in some journalists (e.g. Umar Khurshid 2017) being

forced to take up manual labouring jobs to survive, instead of reporting. Even soldiers are dismissed from service without any compensation should their sympathies be discovered to lie with an autonomous or independent J&K, as was the case with Choudhary Zahoor Ahmed of Goi (Kotli district, near the LoC) who, after four months of detention, was discharged after 13 years of military service in November 2019.[38] These measures are not only aimed at the individuals concerned but may likewise extend to their family members. Grave abuses such as disappearances, illegal detention, torture and death in custody, resorted to by the authorities, the military and the agencies (*vide infra*), as well as 'softer' instruments, such as threats and First Information Report (FIR) on counterfeit grounds are common to silence human rights rapporteurs, journalists etc. Within only one year (January 2016–January 2017), HRCP Gilgit-Baltistan received 21 reports of attacks against or threats to kill human rights defenders and journalists and to suspend and punish local newspapers for publishing stories critical of local authorities, made by government officials and concerned authorities, and 2017 was no better.[39] The police generally refuse to register FIRs submitted by abused or tortured journalists and activists.

A very special case of symbolic dimensions, being an instance of the flagrant violation of basic political rights, is the loyalty oath which is stipulated by the local constitutions and which all senior office holders in PaJK, from the president of AJK or governor of GB down to senior PaJK administrative officers, are legally obliged, even though they do not enjoy full citizen rights in Pakistan: 'I will remain loyal to the country (i.e. Pakistan—P.B.) and the cause of accession of the State of Jammu and Kashmir to Pakistan' in AJK,[40] 'I will remain loyal to Pakistan',[41] 'bear true faith and allegiance to Pakistan and [to] uphold the sovereignty and integrity of Pakistan' (GB)[42] or to vow to 'remain loyal to the country and the cause of accession of the State of Jammu and Kashmir to Pakistan' and to pledge 'allegiance to Pakistan' (AJK),[43] not to their electorate and people of PaJK. It is therefore not surprising that the legal prerogatives at the disposal of the regional governments, and in particular the GB government, are primarily geared to protect 'the integrity, security or defence of Pakistan',[44] and not the interests of GB citizens, and accordingly the local governments serve the interests of Pakistan, akin to colonial rule imposed on a subject population inhabiting an occupied territory.

What is binding at the top is also binding at the lower levels of legislation and institutions. Accordingly, no political parties are allowed which are not loyal to Pakistan, as promulgated in the Azad J&K Political Parties Ordinance of 1973.[45] Similarly, a complementary prohibition is enacted by the Azad J&K Legislative Assembly (Election) Ordinance of 1970, which bars anyone running in an election who 'is propagating any opinion or acting in any manner prejudicial to the ideology of Pakistan, the ideology of the State's accession to Pakistan or the sovereignty, integrity of Pakistan or security of Azad Jammu and Kashmir or Pakistan, or morality, or

the maintenance of public order, or the integrity or independence of the Judiciary of Azad Jammu and Kashmir or Pakistan, or who defames or brings into ridicule the Judiciary of Azad Jammu and Kashmir or Pakistan, or the Armed Forces of Pakistan'.[46] The same ban is imposed on political parties, not only on individuals: no party can contest elections if it 'propagates any idea other than the accession to the state of Pakistan', and if it does, it is 'dissolved'.[47] As a result, most political views and those who hold them, except for the singular orthodox one, are not only excluded from political and public life and due electoral process, but also not tolerated legally. Legitimate parties and other political groups[48] which advocate for true autonomy, self-determination or independence are by default disqualified from contesting elections, and their leaders and members are regularly subject to intimidation, harassment, suppression, surveillance, the obligation to regularly report to a police station, beatings, arbitrary arrest etc. and other forms of ill-treatment or prohibitive measures.[49] It is not surprising that the official scene has been monopolised by extensions of Pakistan's major political parties such as the Pakistan Peoples Party (PPP), Pakistan Muslim League (N) (PML-N) and Pakistan Tehreek-e-Insaf (PTI), and no activist can ever contest elections who is affiliated to local parties operating for instance under the umbrellas of the Gilgit-Baltistan Democratic Alliance (GBDA)[50] and the Gilgit-Baltistan National Alliance,[51] whose members are regularly arrested.[52] Both in AJK and in GB nationalist or pro-independence activists, even schoolteachers (e.g. Skardu in 2015) are regularly harassed, detained and tortured, especially before elections. One such crackdown was experienced in the run-up to the 2013 GB elections, when dozens of activists were persecuted under fabricated charges. The situation in GB is reported to have slightly relaxed since Spring 2019, and a number of previously detained nationalists are reported to have been released.

At the same time, nationalist parties are often tolerated and usually allowed to function.[53] In fact, some of these parties are even encouraged to operate, for instance the mildly pro-Pakistani Balawaristan National Front-Naji, led by its founder Nawaz Khan Naji, as well as the Karakorum National Movement, with its students' wing Karakoram Students Organisation, which have actively participated in elections. Since 'the stance of a separate identity of Gilgit-Baltistan from Kashmir is dominating the discourse propounded by the nationalist parties',[54] such parties heavily undermine the idea of a united Kashmir, practically supported by most political organisations in Pakistani-administered AJK and in Indian-administered J&K. The *factual* fragmentation of the region now clearly lies within the true compass of Pakistan's interests, as it does within India's, and Pakistan's declared support for the Muslims of J&K over the years more and more resembles the policies of Russia towards Donbas of Ukraine it occupies: it is no longer about the annexation of the territory but rather about having a leverage in the region which is treated as a potential destabiliser of Pakistan's neighbour. This explains why Pakistan—with a view to creating

fresh, compartmentalised identities defined anew along different political and regional lines—does allow a number or nationalist parties to function both in GB and AJK at a low level, without them contesting elections, as long as they do not cross the red line, which is criticism of the military, the agencies and the policies of Pakistan. There have been cases however, when such parties were formally de-legalised, for instance the Balawaristan National Front (Abdul Hameed Khan Group) (BNF-H)[55] was added to the list of 73 organisations currently banned in Pakistan.[56] In May 2019, 14 members of BNF-H were arrested under terrorist charges and alleged cooperation with India's Research & Analysis Wing (RAW). Other proscribed organisations from GB include Anjuman-e-Imamia Gilgit-Baltistan, Khana-E-Hikmat Gilgit-Baltistan, Shia Tulaba Action Committee (STAC), Markaz Sabeel Organization, Tanzeem Naujawana-e-Ahle-Sunnat (TNA), Muslim Students Organization (MSO) and Tanzeem-Ahle Sunnat wal Jamaat, whereas an AJK organisation is Tehreek-e-Azadi-Jammu & Kashmir (TAJK)[57] and (rightly) considered a front for Jamaat-ud-Dawa (JuD). Some of these are genuinely nationalist parties, and others are terrorist outfits or extremist religious groupings. Not just pro-autonomy or pro-independence parties are de-legalised in PaJK but also other organisations. For instance after a long smear campaign, the Association of Global Humanists and Ethics (AGHE-Pakistan), an NGO working on human rights, in particular on women and children's issues in Gilgit-Baltistan, was closed down by the GB Home Secretary in 2013 as a 'a foreign organisation', despite both local and international protests.[58]

Such a *sine qua non* requirement of loyalty for all important offices and also for parties and organisations in PaJK is most paradoxical in nature and in a sense unconstitutional, because it contradicts the oft-repeated commitment, expressed for instance in the Interim Constitution (AJKIC), that 'the future status of the State of Jammu and Kashmir is yet to be determined *in accordance with the freely expressed will of the people of the State* (italics—P.B.)'.[59] It also contravenes the 1973 Constitution of Pakistan, which expressly asseverates that 'when the people of the State of Jammu and Kashmir decide to accede to Pakistan, the relationship between Pakistan and the State shall be determined *in accordance with the wishes of the people of that State* (italics—P.B.)' (CIRP 1973, Art. 257). This unconstitutional denial of political rights is a most serious limitation also restricting a number of related rights, such as the right to freedoms of expression and opinion, assembly and association, the right to participate in elections etc. Also at the level of universities and academic institutions, the freedom of speech and self-governance are strongly restricted, and 'student unions and representation in decision-making bodies on campuses', which protesting students demand, are non-existent.[60] This makes the system of representation of the people's voices and needs completely defunct in all Pakistani-administered territories.

In addition, whereas the ban on all non-Pakistan-approved parties is of a formal dimension ingrained in legal acts, such as constitutions, a wide range of additional preventive measures are applied outside the legal framework and implemented by the military, intelligence agencies and the police in an extrajudicial manner. The result is that the public and political sphere is a monolith of Pakistani ideology, controlled by both the Pakistani government and its apparatus of state violence.

10.2 The denial of freedom of expression and related rights

The afore-indicated legal and illegal restrictions on political participation and representation have had a strong bearing on a range of corollary rights, such as freedom of expression, freedom of thought, freedom of speech, freedom to form, hold and express opinions, to impart and receive information and ideas as well as the right to access information, the right to conscience and religion etc. Any dissent from the officially professed 'ideology of Pakistan' and Pakistani-approved views as well as any criticism of Pakistan's policies, the Pakistani government and, in particular, of the military and the intelligence services is treated with suspicion and proscribed, and this applies not only to political parties with the only exceptions being militant organisations and terrorist outfits, which 'have had free rein—particularly between 1991 and 2001—to propagate their views and disseminate literature'.[61]

Those restrictions imposed on the freedom of expression are accorded a legal sanction and enshrined in the legal system, as a result of which any action or malpractice undertaken by the local authorities and the police as well as by the Pakistani military and security forces, intelligence agencies etc., which would otherwise be considered abusive in any democratic country, is not only tolerated but bolstered, even though incompatible with international legal standards. For instance, through Section 9, AJKIC provides for the exercise of freedom of speech, albeit not unlimited, and formally imposes restrictions in the name of the officially professed Pakistani spirit: 'Every State subject shall have the right to freedom of speech and expression, *subject to any reasonable restrictions* (italics—P.B.) imposed by law in the interest of the security of Azad Jammu and Kashmir, friendly relations with Pakistan, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence', repeated verbatim in GB regulations.[62] At the same time, Section 4.7(2) of AJKIC explicitly rules out anything that would not fall in line with the accession-to-Pakistan imperative: 'No person or political party in Azad Jammu and Kashmir shall be permitted to propagate against, or take part in activities prejudicial or detrimental to, the ideology of the State's accession to Pakistan'. The idea is echoed *verbatim* in Gilgit-Baltistan legislation as well.[63]

In this way, Pakistan turns the whole idea of the plebiscite to determine the future of the territories, which has remained an important propagandistic

and political weapon in Pakistan's territorial and ideological disputes with India, into an ineffective and counterproductive instrument and thereby plays into the hands of its arch-rival, India: no referendum, election, plebiscite or public poll can ever be reasonably conducted under such restrictive circumstances, with any possibility of an open public debate thwarted.

A common practice of harassment on the part of Pakistani agents is to raid the houses of local activists, journalists and dissidents, either in their presence, in the presence of their families, or in their absence, with the intention to intimidate, search, wreak havoc, damage and confiscate literature, collected data, reports in preparation, disrupt civil activities etc. A recently reported case was that of Tanveer Ahmed, whose house was raided on 23 October 2019.[64] He has been continually harassed by the police, Pakistani army and clandestine agencies, and this harassment has included arrests, kidnappings, illegal detentions, torture, fabricated charges[65] and other kinds of persecution. These measures were aimed at intimidating him and stopping him collecting the data on public opinion in AJK later published in the *Citizen Public Opinion Survey*.[66] He was also banned 'to conduct his public opinion survey' by the AJK Government in 2016, but has consistently been acquitted of all charges by the AJK High Court.

The persistent policy of threat, intimidation and arrest, occasionally combined with enforced disappearances, torture and extrajudicial killing, is frequently used as a mechanism to deal with members of pro-independence or nationalist political organisations and parties, with political dissidents and critics of the nature of Pakistan's relations with China, in particular of the disastrous impact of China-Pakistan Economic Corridor (CPEC) on the region. This has been detailed in two reports by the Office of the United Nations (UN) High Commissioner for Human Rights on the *Situation of Human Rights in Indian-Administered Kashmir and Pakistani-Administered Kashmir*.[67] The standard practice to coerce, intimidate and pressurise political and social activists, who as a result happen to 'flee Pakistan and continue their political activities in exile or stop them completely', relies on treating their families, including children, as hostages who receive direct threats.[68]

These restrictions do not only impact the activities of political groupings, parties, non-governmental organisations etc., but also what can be reasonably aired in the open space of news and information. All media, including electronic media, TV stations, radio stations, publishing houses, the press etc., both in AJK and GB,[69] are subject to the same restrictions as politicians, political parties, social organisations etc. The loyalty policy mentioned earlier is imperative for all publishers of books or periodicals. Publications that are not in line with the official 'ideology of Pakistan', that can be classified as *āzādī* ('freedom, independence'), and that may be regarded as supporting national values in whatever way are banned, either officially[70] or practically. The police and the intelligence agencies raid private houses or the premises of local organisations and confiscate such literature.[71] A favourite target is books by Sardar Arif Shahid or Shabir Choudhry.[72] Even official

publications, legally printed in and permitted to circulate in Pakistan, are occasionally confiscated and practically disallowed in PaJK, and even banned from legally being taken out of Pakistan in general, a situation the author personally experienced with Justice Syed Manzoor Hussain Gilani's *The Constitution of Azad Jammu & Kashmir* (Gilani 2008).

The provisions of Anti-Terrorism Act (ATA) and Prevention of Electronic Crimes Act (PECA) are widely used to arrest activists, journalists, politicians etc. in order to thwart any political dissent, to restrict the freedom of the media, or to curb either the expression of opinions deemed not authorised by the Pakistani government or criticism of local PaJK authorities, for instance for their incompetence, negligence or corruption.[73] A standard procedure is to include the arrested person's name under Schedule IV (and § 11EE) of ATA 'as a person concerned in terrorism'. The list of such 'banned' persons placed under Schedule IV is regularly updated and extended. In GB, the 'List of Persons Retained on Schedule IV, ATA' included 94 names and was expanded with 46 new names of social activists, human rights defenders or journalists politically uncomfortable either to the GB Government or Pakistani authorities.[74] As HRCP (2017: 20) discloses, 'individuals classified as threats to security by the LEAs (law enforcement agencies—P.B.) were forced to report their movements to the Station House Offices (SHO), … cannot leave the districts they reside in without reporting their intended movements' and 'can be arrested if they fail to comply'. Importantly, 'the authorities do not share the specific charges with the individuals they monitor under Schedule Four'. In addition, as reported by various sources, the authorities regularly arrest journalists, dissidents, social activists, civil society groups etc. on antiterrorism charges, especially when they overtly support the cause of regional autonomy and self-determination or criticise government plans, such as CPEC, considered by many as detrimental to the welfare of the *local* population.

CPEC and 'China and Pakistan's All-Weather Friendship' are often employed by the Pakistani authorities and the army as a pretext to quell social unrest, strikes and political dissent, both in PaJK and in Pakistan. The arrest of the leaders and drivers of the All Pakistan Train Drivers Welfare Association (APTDWA, popularly known as the Railway Drivers Association) under the ATA for holding a strike on 22–23 July 2017 provides a typical example of the excessive suspiciousness and oversensitive reaction of the government, which justified the arrests with the claim that 'the strike of the workers is conspiracy against CPEC. They attempted to damage the trust of China-Pakistan relations'.[75] Under the pretext of 'damaging the solidarity and integrity of Pakistan' or 'defaming a regional legislator', local journalists and environmental activists in PaJK, particularly in GB, are arrested and sentenced to life under terrorism charges.[76] By default, it is not only journalists thinking in 'unorthodox' manner that are regularly harassed, arrested and charged for dissenting voice and for expressing their criticism but also activists of various local organisations, such as

the Balawaristan National Front or the Awami Workers Party,[77] anti-CPEC critics[78] or political activists, human rights defenders and student protesters, 'especially after the introduction of Pakistan's National Action Plan for countering terrorism and extremism in December 2014'.[79]

Such draconian provisions unavoidably lead to the common practice of self-censorship in the media and in the public sphere in general, a phenomenon regularly described in reports[80] and frequently disclosed in personal communications. Media houses are forced to suppress information known to be disapproved of by the authorities, for instance being financially dependent on official advertisements and wishing to avoid persecution or harassment from the agencies.

Pakistani government policies monopolise and negatively impact the circulation of news and information and the access to information. In GB, there is only one TV channel, the state-owned PTV (Pakistan Television Corporation). Only three radio stations operate in GB, the state-owned Radio Pakistan and two private FM channels (FM/GB93 Suno FM and FM/GB99), and the all-Pakistan FM Network's GB extension: Suno FM 89.4 Gilgit-Baltistan. More than 15 local newspapers are currently published in GB, such as the dailies *K2*, *Baad-e-Shimal*, *Pamir Times*, *Passu Times*, *Mahasib*, Daily *Waadi*, *The Dardistan Times*, *Daily Sada-e-Gilgit Baltistan*. A decade earlier, the total number of newspapers published in GB, both dailies and weeklies in Urdu and English, oscillated around 22–25 titles. Some of the media outlets have been closed down and banned, such as the *Balawaristan Times* of Baang (www.bangesahar.net), a Gilgit-Baltistan weekly published from Karachi and affiliated to BNF-H, after the ban imposed on the group,[81] or the *Broshaal Times*, both shut down in 2016. In the same year, the editor-in-chief of the *Broshaal Times*, Daulat Jan Mathal, was arrested and severely tortured for his alleged support for nationalist parties and purported links to the Indian intelligence agency (RAW).[82] All TV and radio media are both monopolised and heavily censored by Pakistani agencies which have dedicated manpower to control what information is broadcast, and the outlets practise self-censorship out of fear of harassment and loss of licence.

The situation is not much different in AJK, where all media are likewise controlled by Pakistani agencies and no national, truly local Kashmiri TV and radio stations are to be found on the ground. This situation has not changed over the years.[83] Television is state-monopolised: besides PTV, owned by the Pakistani state-broadcaster, there is also AJK TV, an AJK pay television channel owned by the same PTV. The contents of what the few city-wide radio stations in Mirpur, Rawalakot and Muzaffarabad air is tightly controlled by the authorities. Among the major AJK newspapers, owned by local people in AJK, we find such dailies as *Jammu Kashmir*, *Kashmir Express*, *Kashmir Link*, *Kashmir Times*, *Jammu Kashmir Times* and *Sada-e-Chinar*, all of which are Urdu papers. However, they are all printed, published and distributed from Pakistan. The news in the region of PaJK is fully

controlled by Islamabad: the media licence to publish within the region is granted by respective Islamabad-controlled Councils and MoKGB[84] as well as by the Pakistan Electronic Media Regulatory Authority (PEMRA). The region has no news agency of its own,[85] and, at least with respect to international news, regional broadcasters are fed with the media input provided by the Associated Press of Pakistan, controlled by the Ministry of Information and Broadcasting.[86] Furthermore, the Pakistan Armed Forces have their own media wing, the Inter-Services Public Relations (ISPR), which feeds its own share of broadcasting contents and information to the civilian media. However, the Kashmiri diaspora operates various social media platforms, mainly as web TV platforms on Facebook, and these are gaining prominence, including Jammu Kashmir TV (JKTV). Although international media broadcasts are generally mostly available, though with serious limitations, a blanket ban can be occasionally imposed on news broadcasts and media content coming from India.[87] There are cases when cable operators are 'compelled to take certain channels off air'.[88]

Likewise, the rights to impart and to receive information and ideas are denied to the citizens of PaJK both by legal regulations barring any dissenting voice and by respective practical action on the part of the government and clandestine agencies, and the restrictions also impact other, related rights such as the freedoms of association and peaceful assembly. Within the legal system imposed on PaJK,[89] all political parties, organisations or broadcasters which want to be formally registered and be active have to accept the final and irreversible character of accession of J&K to Pakistan.[90]

Since, on 17 April 2008, Pakistan signed the ICCPR, which came in force on 23 September 2010, the provisions of Article 19.2 pertaining to the right to information had to be adopted as well. Through a 2010 constitutional amendment, Article 19A of CIRP (1973) (with additional laws of RAIA (2017) adopted) states that 'every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law'. These provisions have been *verbatim* cited in recent GB legislation[91] as well as in AJK legislation.[92] However, to date, these provisions seem to be a dead law, and all information potentially relevant to the state of human rights, being considered sensitive by the government of Pakistan and its agencies, continues to be withheld from public opinion, the media, local politicians and activists. The maladies which have plagued all international and regional reports on human rights in PaJK for decades are for all practical purposes still in place, namely all relevant research has to necessarily be based on partial data and rough estimates alone.

10.3 Freedom of religion and belief restricted

A corollary of the right to freedom of expression is the freedom of religion or belief,[93] which *necessarily* also includes the freedom to change one's own religion,[94] a right consistently contested and denied in most Islamic and

Muslim-majority countries, including Pakistan and PaJK. The legal setup of both Pakistan and PaJK makes them confessional state(s), with religious minorities barely tolerated.

Both the President and Prime Minister of Pakistan, as the actual law-givers who promulgate constitutions for GB and AJK, have to be Muslims according to the Pakistani constitution.[95] In PaJK, the requirement of being a Muslim is extended to all the highest offices. In AJK—as the respective oaths of AJKIC (1974) indicate—the president,[96] the prime minister[97] as well as the chief justice, the judges of the Supreme Court, the chief justice and judges of the High Court and the auditor-general[98] have to be Muslims. Similarly in GB,[99] the governor, chief minister, ministers, speaker and deputy speaker of the Legislative Assembly, members of Legislative Assembly or Council of GB, chief judge and judges of the GB Supreme Appellate Court, chief judge and judges of the GB High Court, advisor, auditor general and chief election commissioner[100] must be Muslims. In these cases, we can speak of discriminatory treatment against the members of religious minority groups, including Hindus, Sikhs, Christians or Aḥmadīs, the latter declared non-Muslim in 1974[101] and penalised for identifying themselves and their religious practices as Muslim and their places of worship as mosques (*masjid*).[102]

In recent relevant constitutional laws of PaJK, it is only GGBO (2018), now defunct, that takes cognisance of the existence of non-Muslim citizens or of citizens declared to be non-Muslims (Aḥmadīs) by the Constitution of Pakistan.[103] AJKIC (1974)[104] mentions the category of non-Muslims only in the context of the consumption of alcoholic liquor being allowed for religious purposes in the case of non-Muslims (primarily the Christians are meant, but potentially also the Kalash people). The constitutions of GB and AJK[105] emphasise the protection of the 'Islamic way of life' and 'compulsory' teaching of Islam as a state duty: '(1) Steps shall be taken to enable the Muslim State Subjects (in GB: "Muslims of Gilgit-Baltistan"—PB.), individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah. (2) The state (in GB: "The Government"—P.B.) shall endeavour … (a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran', etc. Unlike CIRP (1973) or GB legislation, AJKIC (Sec. 10) penalises a conversion from Islam, or an attempt to convert a Muslim to some other religion.

All the aforementioned constitutional provisions of Pakistan and of PaJK clearly discriminate against other religions and provide privileged treatment to the followers of *mainstream* Islam, including exclusive access to the highest offices. This violates the principles of equality, equal treatment and equal rights as set out in the international human rights regime, adopted also by Pakistan.[106] In addition, unlike in the National Assembly

of Pakistan, which has seats reserved for non-Muslims, no similar solution is to be found in either GB or AJK despite the presence of some in the population considered non-Muslim since 1974, namely the Aḥmadīs. A general Pakistani oppressive anti-Aḥmadīya tendency has also been adopted into the legislation of AJK. On 26 April 2017, the Legislative Assembly passed an anti-Aḥmadī resolution which forces the Aḥmadīs to register as non-Muslims and penalises Muslims who join the Aḥmadīya group as apostates (*murtadd*).[107] This formal act only put a legal seal on the long-established persecution of Aḥmadīs in AJK, where their places of worship are reported to have been blasted to rubble,[108] where numerous criminal cases have been registered against the members of the group under the anti-Aḥmadī laws, where they are prevented from bidding for official contracts, where they lose jobs etc. A number of such cases have been documented in Persecution of Aḥmadīs in Pakistan (PAP) reports. In addition, the Aḥmadīs in the region are also reported to be required to denounce their religious tradition in order to obtain a Pakistani passport.[109] What is most worrying, the Sunnī majority population in AJK supports and demands such discriminatory actions. There are reported cases of harassment, and even of expulsion from villages, of Aḥmadīs at the hands of local population, also instigated by clerics (*mullā*), and this minority does not receive the protection from the police and the authorities to which they are entitled. On the contrary, the persecuted Aḥmadīs end up being questioned by the police.[110]

Not only Aḥmadīs fall victims to reprisals. There is a history of recurring persecution of the Shīʿa population of GB by the authorities and the army, e.g. in 1993, when the authorities accused them of staging riots on 17 August 1993 and of hoarding weapons, in 2003–2006 after the so-called textbook controversy,[111] when the Shīʿas protested the contents of 16 textbooks that were prescribed to be used in the schools of the then Northern Areas and that presented Islam and history through the Sunnī leaning.[112]

This strong sectarian bias on the part of the Sunnīs is reconfirmed in the study *Citizen Public Opinion Survey—AJK: Report 1.0*[113] in which more than a quarter (28%) of the whole (largely Sunnī) population of AJK believes that Muslims cannot coexist with non-Muslims. On the positive side, however, almost all (99%) are convinced that 'there should be equal rights and (responsibilities) amongst citizens irrespective of cast, creed, colour, ideology or religion', which does present a contradiction.

Through two constitutional amendments of 1974 and 1985,[114] the Constitution of Pakistan provides a definition of 'Muslim' and a definition of 'non-Muslim',[115] both of which are also highly problematic in terms of human rights. These laws are extended to the population of PaJK, and serve to penalise a number of religious practices which they deem 'non-Muslim' and consequently denigrate certain other religious minorities, e.g. the Aḥmadīs: as such these laws are unacceptable in terms of fundamental personal freedoms. They impinge on one of basic rights which concerns one's own *self-identification*, including the freedom to choose and define one's

own religious identity, which underlies the core of one's existential experience in the world. They also mark the collapse of the private sphere of the individual and annul the protections this sphere should be granted, as well as dissolve the important divide between the private and the public and abolish the distinction between the law and morality, which are not, and should never be treated, as co-extensional. Consequently, they contravene Article 17 of ICCPR, which prohibits any 'arbitrary or unlawful interference with his privacy, family, home or correspondence, ... unlawful attacks on his honour and reputation' and obligates the state to provide legal protection to such persons 'against such interference or attacks'.

Despite wide criticism from 'several United Nations Treaty Bodies and Special Procedures mandate holders for violating a range of international human rights principles and emboldening instigation of violence against religious minorities',[116] including the detailed 2017 report of the UN International Commission of Jurists,[117] defamation[118] and blasphemy[119] remain criminal offences regularly used across Pakistan to silence journalists, activists, critics of ISI and the military etc., and the region of PaJK is no exception. Two examples of this standard practice should suffice. The laws were used to target Mir Shakeel-ur-Rehman, founder of Geo TV (Geo News) and the Chief Editor of Jang Group of Newspapers, who was sentenced to 26 years for blasphemy in 2014 by the Gilgit-Baltistan Court on 26 November 2014[120] in what can be interpreted as a gesture of reprisal. Earlier the same year, Geo TV reported that the ISI spy agency had been behind the April shooting of Hamid Mir, one of the most popular journalists in Pakistan, after which PEMRA suspended Geo TV for 15 days and imposed a USD 101,500 fine on 22 May 2014. Geo TV, owned by Mir Shakeel-ur-Rehman, was forced to print a front-page apology to Pakistan's ISI spy chief on 26 May. Following this, however, 'Geo TV and Jang Group served legal notice on the Ministry of Defence, Inter-Services Intelligence (ISI) and PEMRA for defaming and maligning the group' and gave 'the ISI 14 days to retract its accusations and issue a public apology'.[121] The charges of defamation targeted journalist Shabbir Siham, who had earlier published a story on GB parliamentarians who had sexually exploited girls lured by scholarships and jobs, in the *Daily Times* on 28 November 2016. An antiterrorism court in GB sentenced the journalist to 22 years in prison and a USD 4,300 fine on 30 March 2018.[122]

The 2018 and 2019 reports of the Office of the UN High Commissioner for Human Rights on the Situation of Human Rights in Kashmir criticised the blasphemy provisions in force in AJK, GB and in Pakistan, and the discrimination against the Aḥmadīya community.[123] The concluding recommendation to 'abolish blasphemy provisions in Azad Jammu Kashmir and Gilgit-Baltistan to facilitate the enjoyment of freedom of religion and belief by all people'[124] has not only been completely ignored by the governments of Pakistan and PaJK, but additional restrictions were introduced to GB laws. Since 2019, the new provisions impose an obligatory 'Islamic way of life',[125]

absent from previous GB legislation, albeit present in AJK laws. It is indeed worrisome that Pakistani and PaJK authorities do not heed the advice and recommendations of international organisations, including UN bodies and international human rights (HR) treatises to which Pakistan is a signatory, such as the ICCPR, and even aggravate the actual situation. The blasphemy laws and religion-related regulations in force in Pakistan and PaJK are contrary to international human rights norms, effectively serve to wind up the spiral of religious extremism, violence, sectarianism and intolerance in the country, a direct offshoot of which is Islam-inspired terrorism, and thereby hurt the existential interests of Pakistan itself, which has become a victim of such fundamentalist religious policies in recent decades.[126]

Cultural and religious tolerance, inclusive open-mindedness and receptiveness in a multireligious and multi-ethnic state such as Pakistan, is a *conditio sine qua non* for its actual survival as a well-functioning and non-anarchic state. The current regulations are clearly counterproductive and damaging both for religious groups and for the state as a whole. Despite general statistics according to which more than 96% of the population follow Islam, the state is far from religiously monolithic. *Ḥanafī Fiqh*, or a particular school of the four Sunnī Islamic jurisprudence traditions, is certainly the largest in Pakistan, which makes all other religious groups minorities Muslim minorities, such as (1) the Shīʿas, with their divisions into (a) the Twelver (Ithnā'sharī) sect and (b) the Ismā'īlīs, with their subbranches of the mainstream Nizārīs (followers of Aga Khan Imāms), the Musta'līs, the Ṭayyibi Ismā'īlīs, including the Daʿudiyya Bohrās (Dawoodi Bohra) and the Sulaymanīs (Sulaymanī Bohras), as well as (2) the persecuted Aḥmadīya branch, alongside other small religious communities of Christians (Catholics, Anglican Catholics, Eastern Orthodox as well as the Protestant groups such as Methodists, Presbyterians and Lutherans united as the Protestant Church of Pakistan), Hindus, Sikhs, Buddhists of various ethnicities (Mangrik, Tibetan, Broq-Pa, Rigzong, Mon, Gara, Bodh, Beda, Changpa and Lama) or the religion of the Kalash people. However, even the mainstream Sunnī Ḥanafī branch is not a monolith, and various branches and movements can be distinguished within it, such as the internally heterogeneous Barēlvī (40–50%), Deobandī (15–20%), Ahl-i Hadīth, Ṣūfī, or Ahl al-Ḥaqīqa, Nūrbakshshī[127] etc. most of them with liquid identities. What this all means is that no single religious group in fact forms a clear majority in Pakistan. On the contrary, each and every group, including even Sunnī offshoots, are effectively minorities, all of whom may at one time or another require special protection. Such a complex religious composition, compounded by ethnic, social and caste differences, is a powder keg if the ideas of religious tolerance and equal treatment are not taken seriously.

It should be particularly emphasised that in the context of PaJK—especially GB, where we find various Shīʿa groups (the Twelver, the Ismā'īlis with various sub-groups), the Sunnīs Christians, Buddhists and the Aḥmadīs, and also in AJK—that religiously motivated and sectarian violence is

considered one of, or perhaps even Pakistan's, greatest security threat,[128] especially when we count various Islam-inspired militant groups of the Ṭālibān, Wahhābis, Salafīs etc., often not included in the statistics and accounts of so-called sectarian violence, a term usually restricted to Sunnī–Shīʿa confrontation.[129] It is not a coincidence that 'the first case of sectarian violence resulting in the loss of life occurred in 1975, when a Shīʿa Muḥarram procession in Gilgit was fired at from a Sunnī mosque',[130] happened in the 1970s. This is the period that follows the 1971 disintegration of Pakistan, the 1973 Constitution of Pakistan as an *Islamic Republic*, Ahmadi Laws 1974 which define who true 'Muslims' and 'non-Muslims' are and declare that the Aḥmadīs do not belong to that group. Also contributing to the resulting spiral of sectarian violence was 'the exploitation of the religious sentiments by different interest groups'.[131] The religious rivalry was further enhanced by the gradual inflow of Sunnī outsiders, supported by government policies, some of whom were attracted by the economic prospects related to the Karakoram Highway (*vide infra*). The policy of Pakistan, especially boosted with the enforcement of GBGR (2019), can be described as demographic dilution of the indigenous populations very much akin to what has already happened to Tibetans, Uighurs and Mongols, once large ethnic majorities in their native lands reduced to minorities under a few decades of Chinese occupation. A very similar process was initiated in IaJK in August 2019. No wonder that many more Shīʿa Muslims have been killed in the region.[132]

This kind of religious violence also affects education: the only public university in the region, Karakoram International University, established in 2002 in Gilgit, and extended to Skardu in 2011, has been a scene of recurrent clashes during the Muḥarram commemorations when Sunnī students attack Shīʿa mourners of the martyrdom of Ḥusayn ibn ʿAlī. In one of these, three people were killed and seven injured, and the university was temporarily closed.[133] How easily such religious sentiments and identities can be ignited and formed anew around what is 'true Islam', and further manipulated and exploited is illustrated by the case of the 'textbook controversy' (*vide supra*). This is why, despite Pakistan's resilience to widespread criticism of its religious laws, a true and unequivocal respect for the freedom of religion and belief does matter both for the populations of PaJK and Pakistan as well as for the security and stability of Pakistan.

10.4 The denial of the right to a dignified life and related rights

Certain caveats concerning the HR-relevant status of dignity notwithstanding,[134] I take the idea of a 'dignified life' as a positive aspect of the interdiction on, or an antithesis of 'torture or … cruel, inhuman or degrading treatment'[135] etc., to which every human being is entitled. Pakistan is a state party to ICCPR since 2010, and as such is obliged to ensure the right to liberty and security (Art. 9), which entails the right not to be 'subjected to arbitrary arrest or detention' (9.1), the right to 'be informed, at the time of

arrest, of the reasons for his arrest' and 'of the charges' (9.2), the right to 'be brought *promptly* before a judge' (9.3), the right, while awaiting trial, 'not [to] be detained in custody', albeit 'release may be subject to guarantees to appear for trial' (9.3), and the right to appeal to a court of law to review a detention (9.4). In addition, Pakistan is also legally bound by the Covenant to respect the principles of legality (15.1). Further, *unlike* India, Pakistan is a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[136] and is thereby obliged 'to prevent acts of torture in any territory under its jurisdiction' (Art. 2.1), and 'no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture' (2.2). Under no circumstances can counterterrorism ever be cited as an excuse for the violations of human rights in this respect or as a justification for a number of unacceptable provisions of ATA, Actions (in Aid of Civil Power) Regulation (AACPR) and PECA.

None of the rights mentioned earlier, including the right to life free from torture, broadly defined in the Torture Convention,[137] are respected in PaJK. In addition, a range of basic human rights, enshrined in the UDHR, are violated in PaJK, and these comprise the right of life (*Preamble*, Art. 3) freedom torture and other forms of mistreatment, freedom from cruel, inhuman or degrading treatment or punishment (Art. 5), freedom from fear (*Preamble*) and from arbitrary arrest, from detention or exile (Art. 9), but also the right to liberty and the security of the person (Art. 3), to recognition as a person before the law (Art. 6) and to a fair and public hearing by an independent and impartial tribunal (Art. 10) etc. The violations also include forced disappearances, extrajudicial killings, arbitrary arrest and detention etc. and are supported by the structural provisions enabled by the laws and executed by the government and administration as well as by the apparatus of state violence, albeit their scale is vastly smaller than in IaJK.

Many of the offences are classified as terrorist acts under an exceptionally wide definition of terrorism, or rather an *actual* lack thereof, and with provisions extended to the apparatus of state violence by the ATA,[138] the AACPR etc. The most frequently reported stark abuses come in a *four-pack* of enforced disappearances, illegal detentions, torture and extrajudicial killings. As reported, it often appears that these four violations are the four consecutive stages for one and the same victim, whose body is later found dumped in some location or never retrieved. The term 'torture' features in and is prohibited by a few Pakistani regulations[139] but is entirely absent, for instance, from the Pakistan Penal Code (PPC) or ATA, which in practice means that torture is not treated as a separate criminal offence. The absence of such a definition gives a free hand to all members of the apparatus of state violence to routinely use torture as an important tool to punish, intimidate, 're-educate', take revenge on, deter or coerce, extract information or force a confession[140] from dissidents and activists in particular, and from the population in general, and also to persecute political opponents.[141] The wide

application of the four-pack serves as a general warning to everybody. The reported cases of torture, often combined with abduction, arbitrary arrest and illegal detention, are innumerable, and the perpetrators indicated by the survivors are mostly ISI agents,[142] but also the police both in AJK and GB.[143] All dissenters from the official Pakistani political line, and those who do not support the idea of the accession of the region to Pakistan, 'are subject to imprisonment and torture', and in addition 'face threats and travel bans'.[144] Torture has regularly been used as a measure to quash demonstrations by the GB population protesting against CPEC, for instance in August 2015. The authorities brand the critics of CPEC as 'anti-national and anti-people' and use ATA and PECA laws against them.[145] A number of cases of torture by the Joint Investigation Team were documented by local human rights rapporteurs and HRCP, but for fear of further reprisals never published. One such case involves 'eight nationalist leaders of GB' (Col Nadir, Safdar Ali, Iftikhar Hussain, Akbar Hussain, Mudassir, Iftikhar, Wasim, Kaka Jan) held under arrest for seven days (from 5 June 2015), and then 'handed over to the Joint Investigation Team by police', whereupon 'they were interrogated for three hours every day at night for eight days from 5 to 13 June 2015. Interrogation team tortured them and asked them to confess that they were agents of foreign Intelligence agency'. The tortured activists had intended 'to submit a memorandum against the GB general elections declaring it illegal as the constitutional status of GB is still unsettled and it has to be resolved according to the resolutions of United Nations Commission for India and Pakistan (UNCIP)' and submitted that 'the proposed economic corridor project between Pakistan and China should be stopped until the people of GB are not taken in confidence' (unpublished report). In the nine months prior to that, 50 other activists had been arrested 'under the charges of terrorism and sedition'. This has been a long-standing practice. When Pakistan celebrated its Golden Jubilee in 1997, GB nationalists mourned the Black Day in Gilgit, as a consequence of which many of them, including Abdul Hamid Khan, the founder of BNF-H, were arrested and tortured.

Torture has also often served as the instrument of the ISI and other agencies to coerce the local population, particularly in AJK, to cooperate and to co-opt individual persons to 'work for Jihad' in IaJK,[146] and also as an instrument for solving personal disputes between the local population and army officers or agents.[147] Former militants who have been active in the Indian zone of Kashmir or those who have worked for the agencies, once they decide to opt out, 'are nabbed by the ISI and shifted to unknown places as punishment for not working in the interests of national security'.[148] As a rule, when the victims survive their ordeals and are subsequently fully exonerated from all charges by a court martial, they receive no compensation or reimbursement for their medical treatment.[149]

Similarly, there is no clear-cut definition of involuntary disappearance, and the offences of 'kidnapping' and 'abduction' are too loosely and vaguely defined in Pakistani law,[150] their primarily concern being such cases as

'kidnapping or abducting for extorting property, valuable security, etc.' (PPC § 365A) or 'kidnapping, abducting or inducing woman to compel for marriage, etc.' (PPC § 365B). It results in 'the absence of explicit criminalization of enforced disappearances in domestic law',[151] and probably the only possible legal basis to criminalise the offenders at the disposal of the victims is the section of PPC on 'kidnapping or abducting in order to murder' (§ 364), which has never been applied to cases of enforced disappearances ('kidnapping, abducting') that ended with the torture and death of the victim, carried out by the ISI and other agencies or by the police. In addition, the extensive provisions of AACPR[152] allow 'for detention by the army without warrants or judicial supervision and indefinite detention in military internment centres, and the allegedly high number of persons held in secret detention under the Regulation'.[153] The families of disappeared persons have no legal means to investigate the fate and whereabouts of the victims. In addition, it is reported that 'the families of disappeared persons are subjected to threats and intimidation to discourage them from filing cases of enforced disappearances'.[154] A Commission of Inquiry on Enforced Disappearances (CIED) was established in 2011 to investigate cases in Pakistan but it has been criticised for 'the insufficient power and resources allocated to' it and for its incapacity, with a 'high number of cases brought before the Commission remain[ing] unresolved, with no criminal proceedings brought against perpetrators'[155] as well as for its 'incompetence in disposing all of its functions' and for its 'lackadaisical and perfunctory' approach,[156] despite the fact that 'Pakistan has [one] amongst the highest number of forced disappearances in the world'.[157] As of September 2019, 'CIED has received 6,156 complaints from across the country, including Gilgit-Baltistan and Azad Jammu and Kashmir, of which 3,938 cases were disposed of while 2,218 are still pending'.[158] Unfortunately, there are no detailed numbers concerning disappearances in PaJK, except for fragmentary data,[159] and the authorities accept enforced disappearances as a normal practice.[160]

Since the pressure on the state organs of Pakistan has been growing over the years to investigate cases of abduction and torture, 'a new trend has been reported in enforced disappearances; it is the extra-judicial killings of the victims following their interrogation under torture',[161] and the bodies are rarely found: no body, no crime. The abductors also use the instrument of extrajudicial murder as a method of removing all the evidence of their crimes, and the cases are never seriously investigated. Even when a tortured body is found and a likely perpetrator indicated, 'not a single person from these agencies has ever been arrested despite their identification'.[162] The parties involved in the process of wrapping the package of enforced disappearance, illegal detention, torture topped with murder in custody of the abducted person include the local police and army units which cooperate with the ISI. A typical four-pack pattern has the police or an army unit arrest the victim, not infrequently in full view of witnesses, hand the person over to the ISI, after which no more information on the whereabouts and

the fate of the victim is forthcoming.[163] The victims who have survived the ordeal often report that they were transferred out of PaJK, to some unknown location in Pakistan. Extrajudicial killing does not only ensue during the investigation and torture but is sometimes applied independently when victims are killed, e.g., in an explosion.[164] The four-pack primarily targets members of nationalist organisations and parties, or critics of CPEC and of Sino-Pakistani relations, or supporters of the ideas of either the independence for the region or of self-determination of PaJK, such as free-Balawaristan movement activists or Jammu Kashmir Liberation Front members.[165] However, persons who have never been involved in any activity of a politically sensitive character may also be targeted with any of the instruments of the package. Individuals suspected of committing an offence often report that they were tortured in police custody and in jails, and coerced to confess to crimes they had not committed. As a rule, persons detained are never medically examined at the time of admission to custody, 'which would allow detection of police torture'.[166]

The level of human rights abuses in the form of the four-pack is aggravated by the general situation in the criminal justice system of Pakistan. What is known as the *ṭhāna* culture, or police station culture, is extremely prevalent across South Asia, both in India and Pakistan, and involves a complex of inefficiency, abusive behaviour by the police, illegal detention, torture, corruption, complete discretion of the officer, misuse of power, etc. The *ṭhāna* culture, tolerated by the state in order to maintain its writ, badly affects the access to justice across the whole of Pakistan as well as in PaJK[167] and reinforces the general level of injustice and abuse of civil rights. It is nearly impossible for the population, for the victims or their relatives, to register an FIR at a police station in cases of enforced disappearance, illegal detention, torture and extrajudicial killing but also in many other offences, because the police either straightforwardly refuse to do so, especially in sensitive cases, or demand bribes.[168] Complaints about police corruption are common. It is also reported that prisoners held in PaJK are treated differently than prisoners in Pakistan whose sentences can be remitted on various occasions, however 'the prisoners in AJK are not allowed this concession'.[169]

A separate issue related to the judiciary and penitentiaries is the treatment of juvenile offenders and accused children. The age of criminal responsibility in Pakistan is seven, under PPC, Section 82, which is extended to the age of twelve if the 'child above seven and under twelve' is 'of immature understanding' (Sec. 83). Such a law allows for a large number of children in Pakistan facing criminal charges they may not understand. The Juvenile Justice System Ordinance (JJSO 2000) introduced in Pakistan in 2000 has never been implemented in the country'. However, the Gilgit-Baltistan Child Protection Welfare and Welfare Act, 2013, does refer to JJSO (2000) allowing for the conviction of juveniles over 15 years of age.[170] JJSO (2000) was also *formally* extended to AJK in 2003,[171] with no

practical effect. In 2018, JJSO (2000) was supplemented with the Juvenile Justice System Act of 2018 (JJSA 2018), which extends to the provinces of Pakistan, but is not enacted in PaJK. The JJSA (2018) not only gives juvenile courts exclusive jurisdiction over minors but also prohibits courts from imposing death sentences on juvenile offenders. Despite this legal protection, the 1952 Pakistan Army Act allows for children to be tried by military courts.[172] As a result, there are no juvenile courts in PaJK, and both children under 12 and juveniles under 18 can face criminal charges and be tried in adult courts as well as held in adult detention centres and prisons. This leads to all kinds of abuses of children and juveniles who are facing trial or are imprisoned in PaJK, as happens throughout Pakistan, where over 10 children fall victim to abuse daily.[173] The numbers in PaJK are unknown and generally the cases remain unreported, with some exceptions. In GB, two similar cases—a child rape case (Hasnain Ali of Gilgit city), in which case all the three accused were children and the victim was a minor, and a rape case of a 14-year old child (Didar Hussain from Ishkoman Ghizer), in which the four accused were also children—were dealt by ordinary courts. A similar case was registered in 2018. In August 2019, a young boy was arrested by KIU police station in Gilgit city and was subsequently raped in the police station by the police. In 2019, an 11-year-old boy was kept in police custody for 24 days in Kotli in AJK.[174] In addition, the police are frequently reported to not take any action when informed of cases of rape of minors. For instance, in August 2019, 'a distraught father of an 11-year-old rape victim committed suicide in Gilgit-Baltistan after the police failed to arrest the alleged abductors and rapists of his daughter'.[175]

Numerous cases have also been documented when the 'right to counsel, a fundamental right of all accused, has been violated'.[176] Some of the accused are reported to either be denied a lawyer or are tried in the absence of lawyers. Very often the accused cannot afford a lawyer and are therefore denied the right to an adequate defence before the court. Such a denial of the right to counsel is particularly problematic in capital cases such as murder cases where the death penalty applies. Since January 2015, 'the jurisdiction of military courts was extended to try civilians suspected of terrorism-related offences through the 21st Amendment to the Constitution and by amendments to the 1952 Pakistan Army Act'.[177] Illegal detention is applied not only to those suspected or accused of political, nationalist or pro-autonomy activities but also to those charged in criminal cases who are held in jail for months or even years (even seven years!) before an eventual court hearing.[178]

Both AJK and GB have a dual system of justice,[179] a mix of the British-inherited model and of the Islam-inspired model common in Pakistan, which has been in practice since 1974 and 2009, respectively, and it is the Pakistani Council of Islamic Ideology that should be consulted to ensure the constitutionality of laws in the region.[180] The process of the appointment of judges is far from transparent and is influenced by the government

and the agencies, which undermines the independence of the judiciary. The interference of agencies in the judicial process as well as a lack of resources make the actual supervision of lower courts by the High Courts difficult.[181] Detentions and arrests by the ISI and other agencies operating in the region are arbitrary and beyond any control of the judicial system, and never scrutinised by the High Courts of AJK and GB, which have no jurisdiction over people arrested by the agencies.[182]

Detention centres and jails, with few exceptions, are overcrowded, with poor sanitary conditions, and the conditions in some districts are 'particularly inhumane and unacceptable by all recognized standards of human rights',[183] which is a widespread problem in Pakistan where 'about 90,000 prisoners are being detained in 87 prisons around the country that are meant to have the capacity to hold some 38,000 persons'.[184] Both alimentary provisions and access to medical facilities provided to prisoners are often unsatisfactory, and the convicted have been reported to occasionally await a medical consultancy for two months even in case of emergency,[185] and it has been reported that 'many prisoners are confined and restrained in fetters',[186] even though Rule 346 of the Pakistan Prison Rules (PPR) stipulates that 'condemned prisoners shall not be fettered except as punishment or when on transfer'. Some, if not most, of these problems are not particularly unique to PaJK but are endemic to all regions of Pakistan. However, the peculiar legal limbo enforced on the region makes it much more vulnerable to misuse and abuse by the authorities, the military and the agencies, and provides far weaker legal safeguards and protection to the population affected by maltreatment. At the same time, there were occasional voices heard in the past stating that 'in general one has a better chance of finding fair judicial recourse in Azad Kashmir than in most areas of Pakistan, except when the charges relate to national security issues'.[187]

Unfortunately, the International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPEF) has been ignored in South Asia, where it is only Sri Lanka that both signed the document (10 December 2015) and ratified it (25 May 2016), whereas Pakistan, alongside five other states (Afghanistan, Bangladesh, Bhutan, the Maldives and Nepal) has never accessed to the treaty and there is no evidence that they are ever going to do so, despite a long campaign by human rights organisations such as Human Rights Watch and Amnesty International stretching over a number of years. The Convention is also dead in India, which did sign the document (6 February 2007) but has never ratified it and there is no evidence that it has any plans to do so in the future (OHCHR 2018a: § 100). Through such disdain for the legal protection of the value of the person and of human life, Pakistan, India and other countries of South Asia encourage mistreatment of their citizens and provide institutional protections for the perpetrators.

10.5 Land rights restricted

The focus so far has been on political and structural aspects of violations and on those of which are decisively formative for or contribute to the occurrence of human rights abuses. A corollary of these is certainly a range of other violations in the sphere of land rights in PaJK, which will only be briefly mentioned here.

The category of the violations of land rights primarily involves, so far as GB is concerned, the impact of CPEC, the landslide into the Hunza River in 2010 and the Diamer-Bhasha Dam, and, as for AJK, the Mangla Dam and the Kohala Hydropower Project as well as the impact of the security zone along the LoC. These cases all involve land confiscation, displacement and the forced relocation of population and abuses of the right to 'freely … pursue [one's own] economic, social and cultural development'[188] and also illustrate the thesis that the population of PaJK has neither the right to legislate on natural resources nor is adequately compensated for their exploitation by the state of Pakistan, which is their main recipient and beneficiary. Unlike the provinces of Pakistan, neither GB nor AJK—despite being the main providers of water and hydroelectricity for Pakistan—are represented in the Indus River System Authority or any other comparable bodies regulating other resources, or have any say in matters concerning the manner their lands are exploited.

A corollary of the problem of the lack of control of the local environment is the depletion of other natural resources and the destruction of the natural environment in PaJK on a growing scale. A good illustration of this is the timber industry and logging in GB organised by the timber mafia. Large swathes of valuable forest are vulnerable to uncontrolled commercial exploitation on a massive scale carried out by timber merchants, mostly Pukhtuns from KPK, and so far 'entire belts of prime forest have been devastated with negative effects on the climate and the environment'.[189] In addition, the demand for wood increased with the deployment of the army along the border with India.[190] Similarly to IaJK, the devastation has resulted an environmental disaster, including deforestation, massive flooding, climatic changes, heavy silting in the dams below. Regular transports of timber with trucks cannot obviously go unnoticed and it is hard to imagine that these would be possible without the collusion of local authorities, politicians and the army (Milbus), which has regular military checkpoints along all the transport routes in the strategic region. Reports frequently surface of the abduction, torture or killing of local activists who attempt to protect the environment at the hands of the timber mafia. As exemplified in the Basho Valley, local people and organisations often complain to the authorities, Forest Department and the army, which results in official bans on commercial logging, however with no noticeable effect: Forest Department officers and guards are observed transporting the illegal timber themselves.[191] Timber is just one example of the exploitation of natural resources

in PaJK in other spheres, including metals, minerals etc. As a result of the cooperation of the uncontrollable timber mafia, administration officers, government and the army, the population of GB is deprived of its right to the natural environment and to revenues from the natural resources on or under their land.

CPEC is one of the projects comprised by China's Belt and Road Initiative that will boost the development and economy of Pakistan and has been praised for providing the region 'with peace, development and growth of economy' as a 'win-win model for all' (CPEC 2019) but will also bring Pakistan much closer into the Chinese orbit as one of its satellites, cementing the future of GB as an integral and inseparable part of Pakistan due to its geographical location. Despite the promised gains, the project has been strongly resisted by all the populations along its planned route, including GB, since its inception, and 'the state's response to local dissent and alienation has been an overbearing security presence, marked by army checkpoints, intimidation and harassment of local residents, and crackdowns on anti-CPEC protest'.[192] The GB residents *en masse* see little benefit in the project, and instead fear the high ecological cost of infrastructure projects, including increased pollution from the heavy goods vehicle traffic, as well as a wave of job seekers from other regions of Pakistan that will negatively affect the Sunnī-Shīʿa demographic balance, 'suspecting that most jobs will go to outsiders'.[193] The people are also concerned that the project has been designed and implemented without any consultation with them and they will not get any due share of the project.[194] There have been cases when local populations have either been forcibly relocated without any consultation[195] or simply evicted from their homes with no compensation, no land to settle elsewhere and no relocation assistance, as it happened in the Maqpoon Das area.[196] To add insult to injury, the authorities regularly classify all such CPEC-related protests of the evicted population as acts of terrorism and sedition, invoking ATA and PECA, and warn the local media, dissidents and activists against criticising CPEC. Those who do not comply are booked under ATA as Indian spies or RAW agents.[197] Conspiracy theories about possible Indian sabotage lead to further restrictions on movement of the locals and 'heightened security measures and stricter monitoring of foreigners and visiting Pakistanis' in the region.[198]

A similar ATA-PECA strategy combined with charges of sedition is applied to deal with demonstrators in other land-related issues, for instance those who have protested against the negligence and inactivity of the national and local authorities in the case of the 2010 Attabad disaster. On 4 January 2010, a landslide into the Hunza River near Attabad destroyed two villages (Attabad and Sarat) creating an artificial dam across the river that lead to the formation of the Attabad Lake, which submerged five villages (Ayeenabad, Shishkat, Gulmit, Ghulkin and Hussaini) along the course of the river and destroyed the Karakoram Highway.[199] As a result—according to some estimates—as many as 40,000 people lost their homes as a direct

or indirect consequence, agriculture was badly hit, the tourist economy in Gulmit and Gojar was reduced to zero and the area faced food crisis. The local community of the affected and the displaced, which received little or no help from the government, demanded compensation in several protests against the inaction of the authorities and local politicians,[200] many of which were organised by the newly formed Rābita Committee Mutasirīn-e Gojal (Coordination Committee of the Affected People of Gojal), the Progressive Youth Front (PYF) and the Balawaristan National Front. Eleven of the 400 participants of a demonstration in Gojal on 4 April 2010 were charged with blocking the Highway (already submerged) and disrupting social order. After a demonstration on 17 June 2010, the Government banned all gatherings of more people than five under Section 144, CCP-P (which grants unrestricted 'power to issue order absolute at once in urgent cases of nuisance or apprehended danger'). This step did not stop the protests.[201] In one of these demonstrations in August 2011, a police firing squad killed two protesters, which resulted in new protests. Several demonstrators, including Baba Jan of PYF who was one of the protest leaders, were detained but subsequently released after national and international campaigns in their support. Eventually, Baba Jan and 11 others, including the President of the Supreme Court Bar Association of Gilgit-Baltistan, were rearrested and sentenced to life imprisonment by two separate local antiterrorism courts.[202] This again led to numerous protests. In a letter submitted at the UNMGIP office in Gilgit-Baltistan on 17 October 2014, the Gilgit-Baltistan Movement for the Abolishment of the ATA appealed to the UN Secretary General 'for urgent action against gross violation of human rights in the disputed territory of Gilgit-Baltistan by imposing draconian law and Anti-Terrorism Act'. The next day, a charge of sedition was brought against a group of 11 human rights activists[203] who had protested against the conviction of Baba Jan and declared the ATA a 'Black Law'.[204] The fake charges of terrorism and sedition brought against Israruddin Israr, already charged on 18 October 2014, were compounded with a charge of blasphemy in 2015. On 22 February 2015, charges of sedition were brought against 19 participants of a seminar 'Gilgit Baltistan in the light of Kashmir Dispute' conducted by the All Parties National Alliance in collaboration with the Karakorum National Movement.[205]

Another flashpoint is the Diamer-Bhasha Dam on the Indus River located precisely on the provincial border between Gilgit-Baltistan and Kohistan District in KPK, practically all of it lying in Diamer (GB), with just 1% of its area around the Bhasha village (KPK).[206] The project, to be completed in 2024–2025, is of great importance to the Pakistani economy, which has been facing severe electricity shortages for years, resulting in frequent 'load sheddings', or blackouts. As of November 2018, 'more than 90 per cent of land acquisition for the Diamer B[h]asha Dam Project has been completed, however, no compensation has yet been paid to the affected public in Gilgit-Baltistan',[207] despite claims to the contrary made by the Pakistan Water

and Power Development Authority (WAPDA).[208] In addition, 'Bhasha Dam has been so planned that the royalty from the dam will go to Khyber Pakhtunkhwa (KP) as Article 161(2) of the Pakistani Constitution stipulates that the royalty and the bulk of the net profits earned from a hydroelectric station shall go to the province where the station is situated'.[209] It is expected that the dam will submerge 2660 acres of agricultural land alongside 32 villages in Diamer District (GB), with a population of more than 30,000 people.[210] The incompetence and neglect on the part of the governments of GB and Pakistan are also replicated here and spark regular protests with demands to allocate a share of the royalties generated by the dam to GB, an increase in compensation and a resolution of the border dispute between GB and KPK, and also for payment of the promised compensation which has been pending for as long as 15 years.[211] To address the problems, the Diamer-Bhasha Dam Affectees Action Committee has been formed, according to which 'the compensation money worth Rs 15 billion was [still] pending against the payment of land acquisition of 15,000 kanal[s]'.[212] Instead of addressing the problems in an adequate manner, the authorities usually resort to force. During one street protest in 2010, the police opened fire killing two demonstrators and wounding many more.[213] The authorities have done little to resolve the problems: one of the latest protests was staged in January 2019.[214]

The residents of AJK face similar problems with the Kohala Hydropower Project on the Jhelum River, 84 km from Islamabad, a part of CPEC under the Belt and Road Initiative, originally expected to be completed in 2021. Interestingly, it is no longer separately mentioned by the Pakistan WAPDA, established in 1958, except as a mark on their maps. A civil society organisation Save the River Movement was soon formed to protect the interests of the local population affected by the project and to protest against the neglect and injustices exhibited by WAPDA. Such projects as the Neelum-Jhelum Hydropower Project, the Kohala Hydropower Project, the Diamer-Bhasha Dam and a number of others in Pakistan are routinely implemented not only without any consultation with the local population but also apparently without proper discussion with regional authorities. In September 2018, compelled by the protests, even the AJK Government 'called for revisiting the construction design … to avoid recurrence of environmental hazards being faced by people'.[215] As a consequence of months of protests, the land acquisition process was suspended in December 2018[216]: 'due to people's protests for concerns over ecological and social impacts, Chinese financers temporarily withdrew in December 2018. People fear this plant will reproduce distress as in the Neelum Jhelum power project',[217] since the Kohala Hydropower Project follows the same technological model. The population is alarmed by the prospects of a similar hazardous ecological impact as had been the case with the Neelum-Jhelum Hydropower Project, inaugurated in August 2018, which immediately affected the Muzaffarabad region and led to a near extinction of the Neelum River within a short time, with 90% of

the river water diverted into the 54-km long hydropower tunnel that passes 380 m below the Jhelum River, and 'as a result, over 30,000 people had to relocate their families from 23 villages to Muzaffarabad city'.[218] In January 2019, street rallies were staged, and traders' complete shut-downs and lawyers' strikes were observed in Muzaffarabad and adjourning towns.[219] The local population of AJK has been protesting for decades that, 'despite producing [the] lion's share of electricity in the country, AJK faces 15-hour long power cuts even during the severe winter weather'.[220] Perhaps, the Kohala case will be unique, with the Pakistan government yielding to the demands of the AJK people to cancel it.

As was the case with the construction of the Mangla Dam, completed in 1967 and further expanded in the 2000s, which brought a catastrophe of cataclysmic dimensions to the local population, infrastructure and economy (with villages, transport routes and the district's two market towns, Mirpur and Chaomukh under water) as well as to history and archaeology (with numerous historical monuments demolished and submerged),[221] the Pakistan WAPDA has never taken the concerns of the local authorities or fears and grievances of the local population seriously and has instead imposed its development plans on PaJK. In addition, no proper formal agreements with the governments of AJK of GB have been negotiated that would secure adequate compensation and royalties, or water usage charges to be paid to the PaJK region, at least at rates comparable to those paid to KPK or Punjab, which in turn has led to bitter frustration, resentment and a deep sense of unfair treatment of the region by Islamabad.[222] Reportedly, 'the authorities in Muzaffarabad unofficially complain that WAPDA neither fulfils its commitments nor treats AJK on a par with other provinces despite persistent appeals'.[223] Despite the damage done, the Pakistani government was never concerned with the population of AJK and in 2000 announced the Vision 2025 programme, which included further expansion of the Mangla Dam and which 'would reportedly cause the further eviction of 90,000 to 100,000 people'.[224] The announcement immediately led to widespread protests by the population, with ensuing protests, strikes, street protests and the government's response in the form of arrests, detentions, torture and harassment. The fourth phase of the expansion of the Mangla Dam power plant followed in 2012, with a US grant of 150 million dollars, which makes the donors complicit in the violations of human rights. One could argue that all the aforementioned infrastructure projects in PaJK exemplify the model of state policies first represented with 'the Mangla dam [which] is a case in which the freedom of the people to reside on their ancestral land and the coercive authoritarian ways of dislodging them is a zero-sum-game, in which the loss of the displaced is irreparable'.[225]

With respect to land and property, the two different parts of PaJK, namely Gilgit-Baltistan and Azad Jammu Kashmir, despite being historically two equal sections of the same political entity, receive unequal legal treatment. Whereas the AJKIC retains the State Subject-hood 'as defined in

the late Government of the State of Jammu and Kashmir Notification No. I-L/84, dated the 20th April,1927', popularly known as SSR (see SSDN), and thereby retains special privileges reserved to state subjects, which include their exclusive right to land and property acquisition in AJK, and at the same time bars outsiders from 'purchasing immovable property' (SSDN), no such guarantees exists in GB any more. There are at least two popular narratives repeated in PaJK.[226] Some maintain that SSR was practically lifted in what later came to be known as the Northern Areas as early as 1947 and non-locals were allowed to buy immovable properties there immediately.[227] The other narrative assumes that Zulfiqar Ali Bhutto officially 'abrogated the State Subject Rule' (SSDN) in 1974[228] and that 'Pakistan's Citizenship Act extends to GB after the abolition of the State Subject Rule in 1974'.[229] This narrative is also reflected in academia[230] that it was Zulfiqar Ali Bhutto and his reforms introduced in September 1974 that 'replaced the agency system and created five districts, … abolishing the colonial Frontier Crimes Regulation that had been in force until then. … These reforms also *eliminated* (emphasis—P.B.) the State Subject Order (i.e. SSR—P.B.)…'.[231] The problem with this interpretation is that the Pakistan Citizenship Act does not *directly* extend either to residents of the Northern Areas or of Azad Jammu Kashmir,[232] and there was no legal act during Zulfiqar Ali Bhutto's rule that ever referred to the SSR in any manner, let alone abolishing it.

Immediately following the Partition in 1947, the 1901 Frontier Crimes Regulation (FCR) was extended to Gilgit-Baltistan. The Regulation did not refer to SSR in any way, nor did subsequent laws introduced in the region. Through the 1949 Karachi Agreement (KA),[233] political control over all the territories remaining under the military control of Pakistan army other than AJK was ceded to the Political Agent appointed in 1947 and residing in Gilgit and under the administrative control of the Political Resident of the North West Frontier Province (NWFP), and these included the following units: (1) Gilgit Agency, (2) the princely states of Hunza (Hunzā) and Nagar (Nagar Riyāsat), (3) the subagency of Chilas (Cilās), (4) the political districts of Punial (Puniyāl) and Koh-i-Ghizar, Yasin (Yāsīn) and Ishkoman, (5) Astor district, (6) the whole of Skardu (sKar mDo), a number of the tehsils of Kargil (Kar Gil), and a part of Gurez Niabat (Gurez Niyābāt),[234] which later made two units, Gilgit Agency and Baltistan Agency, both administered by the Central Government of Pakistan through a separate political resident—appointed in 1950, independent of NWFP, functioning as the Chief Adviser for Azad Kashmir—as a representative of the Ministry of Kashmir Affairs.[235] In 1971, the Northern Areas Committee was formed which soon produced its Report containing a number of recommendations,[236] which led the President of Pakistan (Zulfiqar Ali Bhutto) to announce plans to introduce a number of reforms in 1972.[237] Another committee was established in 1973, which resulted in a new series of proposals for reforms. Consequently, Zulfiqar Ali Bhutto—this time as prime minister—introduced far-reaching changes in the region on 25 September 1974, dissolved the states of Hunza

and Nagar, terminated the institutions of the Mirs (rulers) of Hunza and Nagar and renamed the territories remaining under the jurisdiction of the Gilgit political resident as 'the Northern Areas', integrating them into one political unit.[238] What transpires from this analysis is this: SSR has *never* been lifted or abolished in any formal way, but simply ignored, and practically removed from all legislation that concerns GB. In the case of AJK, we find certain legal continuity: each subsequent piece of legislation after 1948, such as various incarnations of the Rules of Business, retained the special provisions for state subjects. In this way, the state subjects of the territory left outside of AJK, i.e. the residents of GB, can no longer enjoy the status which they once had and which has never really been revoked. With the loss of state-subjecthood, the residents of GB have lost the legal protection of their exclusive rights to the lands they have inhabited for generations and of their exclusive status of linguistic, ethnic and religious minorities in a country with a population 200 times larger than theirs, with financial assets and capital, likewise considerably greater than their own, to buy land and immovable property or to invest.[239]

One may fully agree with GB nationalists who comment that what Narendra Modi's government unconstitutionally accomplished in August 2019, through presidential orders (CAJKO 2019: CO 273) and JKRA 2019,[240] and thereby also lifted the protections of the Kashmiris as state subjects and of their lands under SSR (see SSDN), was merely a replication of what the government of Pakistan had effectively done long before in Gilgit-Baltistan (previously known as Gilgit Agency and Northern Areas) as early as 1947. Both in GB and in IaJK the state-subjecthood no longer exists and the lands and immovable property is up for sale to the outsiders.

Since 1947, Pakistan has done all it could to separate the two parts of J&K it administers, or rather it has failed to do what it should have done as a responsible central government, to link them with roads, after the historical transport routes were severed by the CFL/LoC. In this way, Pakistan has successfully implemented the solution, namely the actual partition of GB and AJK, which it has been criticising for years with respect to what it declaratively describes as the injustice done to the partitioned Kashmir and Kashmiri Muslims across LoC. Both parts of one Kashmir on the Pakistani side have been kept completely apart in terms of infrastructure and transport links, with no single road linking both territories, and transport connecting Gilgit and Skardu with Muzaffarabad is possible only via the province of KPK. With the roundabout travel distance between Muzaffarabad and Skardu via Gilgit and KPK being 475 km, an alternative, perhaps shorter route connecting Muzaffarabad with Skardu via Sharda and Kel has never been contemplated (approx. 220 km in a straight line). All transport infrastructure built in the post-Partition era has served to bring both territories closer to Islamabad (and the military troops closer to PaJK), but not closer to each other, and to draw them apart and away from their historical and cultural links. What counted were the strategic and economic interests of

Table 10.1 Distances between Cities in Jammu and Kashmir

	Road distance	/	*Distance in straight line*
Muzaffarabad to Srinagar	171 km	/	120 km
Muzaffarabad to Islamabad	129 km	/	82 km
Mirpur to Srinagar	317 km	/	142 km
Mirpur to Islamabad	123 km	/	91 km
Gilgit to Srinagar	512 km	/	199 km
Gilgit to Islamabad	457 km	/	272 km
Gilgit to Muzaffarabad[a]	475 km	/	193 km
Gilgit to Muzaffarabad[b]	*non-existent*	/	193 km
Skardu to Srinagar[c]	380 km	/	154 km
Skardu to Islamabad	590 km	/	298 km
Skardu to Muzaffarabad	*non-existent*	/	220 km

a A route via KPK.
b A direct route connecting GB and AJK.
c A section of the Srinagar-Skardu road, an erstwhile 15-km long road link from Kargil northwards along Shingo River Road, now defunct.

Pakistan, not the cultural and economic interests of the residents and their identity. Muzaffarabad, Mirpur and Gilgit (Skardu being an exception) are, in terms of *existing* transport links, much closer to Islamabad than to Srinagar, as Table 10.1 shows.

10.6 Cultural and other rights violated

The status of land ownership, infrastructure projects and transportation development are factors that violate international law and agreements (UNCIP, *vide infra*) and add to the wrongdoings that affect the cultural identity of the population of PaJK, in particular of GB, and their cultural rights. The remote region of GB, considered impoverished and commercially less attractive (which is not actually reflected in Pakistan's provincial income statistics for GDP/PPP *per capita*), had not been a focus of investors decades ago. This changed somewhat after the official opening of the Karakoram Highway in 1978, with foreign visitors still barred from taking the route for the next five years.[241] The project did open the region to outward economic contacts and positively stimulated employment migration and the return of the remittances to GB.[242] The construction of the road had already attracted a certain number of outsiders, mostly Sunnī, from outside the region, and later, also investors as suppliers, but not as direct labourers, because the construction was accomplished mainly by Chinese and Pakistani army personnel.[243] The Highway represents a perfect case study of Milbus (*vide supra*) in which not only state interests are vested but also, or perhaps even primarily, personal interests of members of the military and agencies, which explains why the aspirations and grievances of the local population have largely been ignored, for Milbus by default does *not* represent the interests

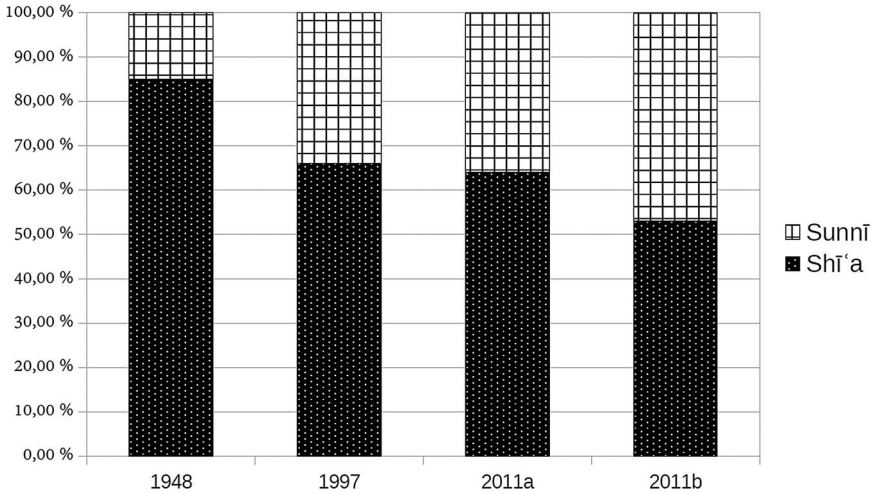

Figure 10.1 Demographic changes (Shīʿa-Sunnī) in Gilgit-Baltistan between 1948 and 2011

of the people. The subsequent announcement of the CPEC plans suddenly brought more business from the outside, with newcomers buying property, which in turn allowed them to apply for a citizenship certificate (domicile) of GB,[244] but also impacted the demographics of the region (see Figure 10.1) where, in 1948, the (Twelver) Shīʿas and Ismā'īlis constituted 85% of the population with the rest being Sunnī and Nūrbakshshīs[245]; by 1997, the (Twelver) Shīʿas and Ismā'īlis—66%, Nūrbakshshīs 10%, Sunnī—24%[246]; and by 2011, the (Twelver) Shīʿas and Ismā'īlis—64%, Nūrbakshshīs 6%, Sunnī—30%,[247] or according to other estimates,[248] the (Twelver) Shīʿas and Ismā'īlis—53%, Nūrbakshshīs 5%, Sunnī—42%. According to some estimates, 'at least 20% of those residing in GB today are actually Pakistanis settled over decades here'.[249] In addition, population growth in PaJK is considered the lowest in all Pakistan and the Pakistani-administered territories. For instance, population growth in AJK between 1998 and 2017 was marginal at 1.6% as compared to the Pakistani average of 2.3%, and the data for GB was not published, but is expected to be even lower than in AJK.[250] The shift in the demographics within the region, which also translates into the economic insecurity of the local populace, escalates sectarian tensions (*vide supra*). In the Gilgit and Skardu areas, large tracts of land have been allotted to non-locals, violating the UNCIP resolutions and the J&K SSR.

Such changes in the religious-demographic composition of GB, which are supported by Islamabad policy, lead to a gradual ethnic and cultural marginalisation of the indigenous inhabitants of the region, and thus infringe on their cultural rights.[251] The cultural, linguistic and religious composition of the region, and in particular of GB, clearly stands out in the territories

of Pakistan. There are more than 25 ethnolinguistic groups in PaJK,[252] with their languages comprising (1) Dardic languages, such as Khowār, Kalashā, Shiṇā with a range of dialects, Maiyā, Burūshaskī, Dumākī and Wakhī[253] as well as Kashmīrī (Keshur); (2) Pahāṛī languages, such as Poṭhwārī, Ḍogrī and Hindko; (3) Indo-Iranian languages, such as Pashto and Fārsī; (4) Indo-European languages, such as Gujarī, Kohistānī, Pājābī (Punjabi), Urdu, etc.; (5) Tibeto-Burman languages, such as Balti (sBal ti), Ladakhi and Purgi (Puriki); and (6) Turkic-Altaic languages (Karluk/Qarluq).[254] As noted earlier, PaJK (especially GB) also offers a complex religious mix of not just Shīʿa and Sunnī, but rather consisting of: the Twelver Shīʿas, the mainstream Ismā'īlis, the Nizāris, the Musta'līs, the Ṭayyibi Ismā'īlis, the Daʿudiyya and the Sulaymanīs, the mainstream Sunnī, Barēlvī, Deobandīs, Ahl-i Hadīth, Ṣūfī, Ahl al-Ḥaqīqa, Nūrbakshshī, etc., the Aḥmadīs, Christians of different denominations, Buddhists etc. In the largely Sunnī Pakistan with tense sectarian conflict, where Muslims make up 96.28[255] or 96.3%[256] of the population, and the Shīʿa comprise around 10–15% of all Muslims,[257] the Sunnīs form merely a noticeable minority in GB (estimates range between 30 and 42%), which cannot have but strongly affected the policies of the Pakistani government and the Milbus. The general situation in GB is negatively impacted by 'inequitable distribution of resources because of the skewed [military] recruitment policy, which shows a bias against smaller provinces and certain ethnic minorities'; for example social outlays, including 'welfare funds are also invested in areas from where the military is recruited',[258] mostly in Punjab. This naturally leads to cultural marginalisation of the whole region largely inhabited by people who are not a 'military recruitment' asset and who are ethnically distinct,[259] many of whom earlier followed Buddhism, and only later converted to some form of Islam, and this has strongly influenced their modern Islamic practices, which may smack of 'un-Islamic' to the Sunnīs of different cultural and historical background.

The cultural-ethnic prejudice in Islamabad policies vis-à-vis PaJK is reflected in the neglect of education and educational infrastructure in the region, which represents one of the two worst cases of negligence in Pakistan, the other being Balochistan, which also faces similar discrimination. As the Human Rights Commission of Pakistan reports, 'an overwhelming majority of schools in Balochistan and Azad Jammu and Kashmir still lack key facilities such as electricity, drinking water, and toilets'.[260]

Women's rights and violence against women, including rape, but also sexual violence in more general terms, is rampant in Pakistan, and PaJK is no exception to the rule. This violence is structurally embedded in general South Asian patriarchal social structure, conservative Muslim values and the state's negligence, with the government hardly doing anything to protect half its population. As in India, also in Pakistan 'rape is a punishable crime, with a zero conviction rate. … a rape occurs every two hours and a gang rape every eighth hour. The unavailability of justice is why we see victims attempting public self-immolation. No implementation of the law has

resulted in rampant rape and further led to an indescribable social chaos, where the new normal is horrific'.[261]

The actual figures for rape and other kinds of sexual violence in PaJK are unknown. The strongly under-reported official figures of gang rape cases in 2015 in AJK were 42.[262] According to the figures of the Human Rights Commission of Pakistan's Gilgit office,[263] the ratio of crimes committed in the name of honour has increased to an alarming level in the area in recent years, which may also mean that such cases are more frequently disclosed than before. In a period of six months (1 January–29 June 2014), 827 cases of murdered women (including honour killing, *karo-kari* ['adulteress' killing] and murder) were reported in GB. Generally, women in PaJK, as in all Pakistan, face a high level of discrimination and denial of basic rights such as access to education and health care, political and social rights, the right to participate in elections etc. In some districts, such as the 100% Sunnī district of Diamar women were forbidden to vote in 2015 by the local jirga (village council). Generally, the best situation is of Ismā'īlī women, the worst is faced by the Sunnī female population.

An acute case, which should be dealt with separately and in which most of various categories of human rights violations converge, is presented by the several kilometres wide security zone along the 742-km long LoC, including a portion of the Neelam Valley, from where barely any information trickles outside and which is hardly ever discussed, both due to the zone's strategically sensitive character (anyone providing details on the area runs the risk of being charged with treason and espionage) and because of the impossibility of researchers, journalists etc. accessing the area. Even official UN delegates intending to visit the areas close to LoC are reported to be denied an NOC from Pakistan, as happened to a UN delegation in October 2019 who had to meet the JKLF leadership at the UNMOGIP office in Muzaffarabad instead of at Chakothi at the LoC, after they had been denied a permit.[264]

The following is largely based on personal interviews with the local AJK population which is in close contact with residents of the LoC zone and regularly frequents the area. The area presents a nexus of a range of human rights-related problems. The only one which does hit the headlines is the aftermath of repeated violations of the Ceasefire Agreement, signed by both countries in 2003, and intermittent shelling across the LoC, which lead to trauma, loss of life, injuries, the damage and destruction of property, infrastructure, habitat and wildlife, restricts access to arable land and often makes the life of the residents impossible. According to *official* statistics from India and Pakistan,[265] in the decade between 2008 and 2017, 2101 (Pakistan) and 2111 (India) ceasefire violations were committed by both sides, which resulted in 56 (Pakistan) and 68 (India) casualties, respectively, in the enemy's territory. Since 2018, the conflict has escalated. As of October 2019, the Indian Army committed 2,229 ceasefire violations, killed 42 civilians and injured 169 others in AJK, whereas the Pakistani Army committed 2,050 ceasefire violations and killed 21 civilians in J&K.[266] As consequence,

the civilians in the respective sectors of the divided Kashmir State suffer at the hands of the neighbouring power, which bears the responsibility of the human rights violations committed on the enemy's territory. To shelter themselves from the shelling, many residents have themselves built small bunkers in their homes. The bunkers constructed by the Pakistani government in villages situated within the 10-km wide belt along the LoC in 2002 were completely devastated in the 2005 earthquake. New bunkers have not been constructed despite the residents' requests to the government, and it was only in November 2019 that the government approved a plan for the mass construction of underground shelters in the border districts of Rajouri and Poonch.[267]

The life along the LoC, in particular in the Neelum Valley sector between Chelhana in the South and Diwaarian in the North, is badly affected by the crossfire in many other ways. The food supply is often interrupted, prices rise exorbitantly, transport links connecting Neelam with Muzaffarabad are disrupted and people have to cover some sections on foot and to carry their goods, trying to escape the crossfire.[268] Access to health services and education is practically non-existent. Communications and access to the Internet are often impossible as mobile networks do not operate there (e.g. in Leepa), telephone landlines are tapped and connections cut if undesired subjects are discussed.[269]

Moreover, the residents of the LoC zone suffer a range of other human violations due to the sheer presence of Pakistani armed forces and agencies. These involve land evictions, including from arable plots, which are acquired for military infrastructure (e.g. barracks) or for other security purposes; removal from houses which happen to be located too close to strategic locations where potential witnesses are not desired; ISI and other agencies' compulsion of local residents, forcing them to become *jihādists* and cross the LoC themselves or to provide assistance to the militants who slip across it; disappearances, torture and murder; and also cases of sexual molestation and rape, all of which largely remain unreported (and unpunished) for at least three reasons: the fear of harassment and further victimisation on the part of the victims' families, threats on the part of the perpetrators who enjoy complete impunity, and the refusal of the local police to register FIRs (also out of fear), and in this way, the population is prevented from accessing justice. Especially, in the case of sexual abuse and rape, women themselves do not report such cases even to their closest families out of shame in the conservative region. It is impossible to assess the actual scale of the abuses and suffering of the population living in the zone.

A persistent problem is that civilians may inadvertently come into contact with Pakistani military forces[270] and the ISI, for instance within the operating range of the army, which may in turn lead to the detention and transfer of the person to the ISI for questioning, a procedure often involving torture and sometimes resulting in death. This is well illustrated by the case of Muhammad Ali Murtaza, originally from Kotli (AJK), a Barēlvī Imām

of Lahore, who visited his family in Janjot Bahadur (Seri, District Kotli, approx. 3–4 km from the LoC) on 17 of February 2013. Before he could reach his home, he was picked up by the army and handed over to their intelligence agency in front of witnesses. Four days later, in the late afternoon, a heavily sealed coffin was handed over to his family by a Pakistani army brigadier under the condition that 'the coffin should not be opened and must be buried intact; there should be no leak to the media; no public agitation; burial should take place late at night'. The family did not obey and unsealed the coffin at night: they could see that torture marks on the victim's body showed that his legs had been drilled, his feet had been nailed and most of his body had overt signs of beating and torture.[271] This case was well documented. Unfortunately, more similar reports are heard in AJK, but the families either obey the army's orders or do not publicise the cases out of fear of reprisals.

10.7 Concluding remarks: own the territory, disown the population

We can see that the violations of human and civil rights in PaJK are of both legal-structural and law-abusive nature, and respectively have their roots both in the legal-constitution framework of Pakistani and regional laws and in the disdain for existing laws shown by the Pakistani government and the apparatus of state violence. On the one hand, the existing laws, often drafted *ad hoc*, allow for, encourage and legitimise human rights violations and crimes, especially those carried out by the apparatus of state violence. These are for instance the broad provisions for abuse under ATA, AACPR and PECA, loyalty clauses embedded in various sections of legislation, including constitutions, media and political parties laws, etc. On the other hand, the apparatus of state violence as the deep structure gripping the whole state of Pakistan, capable of overruling all legal rulings, enjoys complete impunity and is not practically accountable for its actions, either before the government or an independent court or the electorate (nation), and therefore may ignore all legal limitations to its powers. These root causes translate into the actual practice of abuse against the people of PaJK who can neither enjoy their rights as full citizens, because the status of their land remains indeterminate, and have no representation in the legal and political bodies which take decisions with regard to them, nor receive any protection from the state and government that would legitimately represent them and their interests.

In this, we find a plethora of similarities between Pakistan and India with respect to their abusive policies vis-à-vis the people of the erstwhile Princely State of Jammu and Kashmir (PSJ&K), the difference being largely not qualitative but *quantitative*: the scale and brutality of violence, torture, extrajudicial killings, enforced disappearances, deprivation of basic freedoms on the Indian side are incomparably larger. In both cases, especially in the case of the self-styled 'world's largest democracy', the range of human

rights violations disavows any attempt on the part of both countries to usurp the status of a democracy. Some categories of Indian-perpetrated abuses in Kashmir are not found in PaJK, such as the so-called fake encounters, when civilians are kidnapped and extrajudicially executed by officers of the Indian security forces, for instance to gain a promotion, and are later falsely claimed to be terrorists who were engaged in a gun battle. India has succeeded in 'exporting' this despicable practice as far as Colombia where it has gained the label of *falsos positivos*.

A lower instance of human rights-related crimes as compared to India in no way exonerates Pakistan, either the government or the deep state, from the responsibility for human tragedies and disasters perpetrated by them on the territories which they should merely administer and which do not legitimately belong to Pakistan due to their undetermined status in compliance with UNCIP resolutions and international law, which Pakistan declaratively accepts, as reiterated for instance in the latest (13th) amendment of the AJKIC (AJKITAA 2018) which speaks of 'pursuing and fostering our cause of securing self-determination under the UN Charter and according to the UNCIP Resolutions through the democratic method of free and fair plebiscite under the auspices of the United Nations', a reference to UNCIP Resolutions conspicuously absent from all GB legislation. On the contrary, Pakistan and all its institutions, including the apparatus of state violence, are fully involved in, responsible for and complicit in human rights-related crimes committed in PaJK.

Pakistan's policies vis-à-vis the chunk of the former PSJ&K it is expected only to administer are considering Pakistan's own political strategic interests, unquestionably counterproductive and present a curious paradox, which can be formulated with the following three premises:

1 Pakistan uses the population of PaJK as a propagandistic and political tool—or, in other words, as a justification for the character and direction of its policies—in the territorial dispute with India over the J&K territories and consistently demands that it is the *people of Kashmir* who should *determine the future* of the whole territory of the former PSJ&K in a plebiscite.
2 One of the preconditions for any meaningful referendum in the territories that would once and for all determine their future is an *open public debate* in which all alternatives and possible solutions can be discussed, assessed, criticised and in which everyone can participate without any prejudice, before any conclusion can be reached.
3 The precondition to function legally in the open political realm, to contest elections and not be jailed in PaJK, is to unreservedly subscribe to a *single axiom* of Pakistan's internal policy vis-à-vis PaJK, namely defined as 'the ideology of Pakistan' and 'the ideology of the State's accession to Pakistan' (being two sides of the same coin), other alternative solutions being excluded and not permitted.

Clearly, premise (3) stands in stark contradiction to premise (2), which is a precondition for premise (1), which—at least in part—defines Pakistan's international policy in the region. One may conclude that, if the right to self-determination of the people of PaJK and their voices are ignored, they become merely an expendable appendage to the coveted land: the game is not about the people but about the land.

A millennia-old verbal custom of the inhabitants of South Asia, which includes Pakistan and India with their Indo-Aryan languages and common culture, was that 'they did not, in the past, represent the regions of their native land apart from the inhabitants, so that the names of countries or districts were described using the plural form of the name of the inhabitants'.[272] For instance, the countries of Aṅga, Kaliṅga or Pañcāla, etc. were consistently referred to in language in the plural indicative of the inhabitants occupying the lands, namely: the Aṅgas (*aṅgāḥ*), the Kaliṅgas (*kaliṅgāḥ*) or the Pañcālas (*pañcalāḥ*), according to the standard linguistic rule that '"the Pañcalas" (people) means the country (land)'.[273] The very term used for 'country' (sometimes translated also as 'republic') in historical times was *jana-pada*, which literally means 'people's place', i.e. the place and abode of the people and for the people, or simply 'inhabited country'. The idea was equally applied to the lands of the Āryas and non-Āryas, irrespective of their religious beliefs and customs. No meaningful land could be conceived of apart from its inhabitants, who were an integral and essential part of the land, a kind of 'salt of the earth'.

In contradiction to this well established cultural and linguistic practice, evident since antiquity, which also reflected how the population of South Asia structured their conception of the land-people relation, the population of PaJK is in practice treated as a fully dispensable appurtenance present *pro tempore* on the land which is in itself of importance in terms of transportation routes, strategic position, natural resources and a pawn in the strategic game with India the ultimate goal of which is not necessarily the control of all Kashmir but rather a rationale behind Pakistan's policies to forge a sense of Pakistan's national identity against that of its neighbour and a justification for the unshakable and unquestionable paramount status of the army and ISI in the country, the privileged position of which otherwise could have no justification. The price is dearly paid by the people of Kashmir on both sides of LoC with the currency of their human rights and, not infrequently, lives.

After India—both unconstitutionally and against international law—finally abolished any remnants of the autonomy of those parts of Kashmir it administers on 5 August 2019, an autonomy which was inscribed in the Instrument of Accession and through which it enjoyed much stronger protections than the population across the LoC, we may soon also observe a further deterioration of the situation of human rights in PaJK, which will accompany an accelerated process of dismantling any remaining vestiges of autonomy and the special status of AJK and GB. A likely scenario is that the population of IaJK will gradually be diluted with the large numbers of

inflowing Indians and share the fate of the Tibetans, Uighurs and Mongols in, respectively, Chinese-occupied Tibet, Eastern Turkestan (the so-called Xinjiang) and Inner Mongolia, respectively, reduced to minorities in their own cultural lands. PaJK, just as IaJK, may likewise face similar demographic changes and the rising economic domination of the new incomers. In the current situation, it seems highly unlikely that any genuine mechanism may be created through which the people of PaJK will have any say in their fate and the administration of their lands. Their interests are and will probably remain fully subordinate to the interests of Islamabad.

The right to self-determination in the case of PaJK poses yet another paradox, which could only be solved with a good will of Islamabad and cooperation between India and Pakistan, a sheer impossibility in the foreseeable future. A way to a (partial) self-determination of the region[274] would be to grant the status of a separate self-governing, autonomous province to all the territories of PaJK (echoed, likewise, with a similar status of *genuine* autonomy granted to IaJK). This might at the same time carry the risk of sealing the partition of J&K across LoC. A full legal incorporation of GB and AJK as two separate entities into Pakistan may only be done under the guise of 'special measures' to allegedly protect the separate ethnocultural identities and integrity of the peoples of GB and AJK, and also in the name of economic development for the 'benefit' and 'general welfare' of the peoples, which in turn would lead to a complete abrogation of the protections of the same peoples under the SSR, with the same policies implemented in AJK as has already happened in GB. Such dim prospects of cultural destruction and the dissolution of local identities that would follow, and the further deterioration of human rights can only be reversed with a political reshuffle in Pakistan itself, which would make it a genuinely democratic state in which what counts are the people of PaJK, not the empty wastelands of PaJK.

It has been in the interest of both countries to treat their respective chunks of the former PSJ&K as integral parts of their own territories for strategic and economic reasons from the very beginning of the conflict, but also with a vital propagandistic role to play in internal policies of Pakistan and India. However, their interests take divergent trajectories, and in both cases lead to paradoxes. Pakistan's official, albeit unfounded declaration that Kashmiris have the right to independently determine their future stands of course in stark contradiction with its actual policies. In fact, the territories *as such* are of existential importance for Pakistan's strategic goals and economic and military security, mainly as a link to China and the cooperation related to CPEC. This practically renders Pakistan's interests in PaJK territories primarily of defensive and existential character: the region serves to provide Pakistan with a protective cushion for its existence at the side of its powerful neighbour, and jugular vein connecting it to what has arisen as its Big Brother in the North.[275] In contrast, for India, Kashmiris as Muslims do not by default belong to India; however, their territories are paradoxically

claimed to be an integral part of India. From this perspective, India's interests vested in Kashmir are chiefly offensive, unrelated to its survival as a state.[276] It is regrettable that even though the situation of Kashmir and the Kashmiri population resembles that of the Palestinian territories of the West Bank to be annexed by Israel or of Hong Kong (with its autonomy guaranteed under the principle of 'one country, two systems') now dismantled, the abrogation of J&K autonomy does not lead to any noticeable international outcry.

Notes

1. OHCHR (2018a: §§ 14, 26).
2. See Balcerowicz–Kuszewska (2022b: §§ 3–7).
3. GBESGO (2009), GGBO (2018), GBGR (2019) and AJKIC.
4. SCMR (1999/1379: 1401).
5. HRCP (2018: 143), FH AJK (2019).
6. OHCHR (2019: § 148).
7. GBSAP (2018); see also PT (2018-06-21).
8. PT (2018-06-21).
9. See, e.g., HRCP (2019b).
10. See also OHCHR (2018a: § 148), OHCHR (2019: §§ 57, 148).
11. OHCHR (2019: § 152).
12. Established by CIRP (1973: Artt. 153–154).
13. Established by CIRP (1973: Art. 156).
14. Established by CIRP (1973: Art. 160).
15. AJK (AJKIC 1974) and GB (GBESGO 2009, GGBO 2018, GBGR 2019).
16. See also OHCHR (2018a: § 145).
17. HRCP (2017: 10) and OHCHR (2018a: § 146).
18. Petition no Law—3/3/2002-AJKC (Pt), dated 25 June 2008.
19. See Balcerowicz–Kuszewska (2022b: § 5) and HRCP (2010).
20. Cf. OHCHR (2018a: § 145).
21. HRCP (2010: 11–12).
22. HRCP (2017: 10) and OHCHR (2018a: § 146).
23. GBGR (2019, Artt. 9, 11, 12, 19, 26).
24. GBGR (2019, Artt. 25 27, 28, 29).
25. AJKIC, Sec. 15, 16, 17.
26. GBGR (2019: Art. 16(1)/AJKIC, Sec. 7(1)).
27. GBGR (2019: Art. 16(2)) = GBESGO (2009: Art. 9(2)).
28. AJKIC, Sec. 7(2).
29. Cf. OHCHR (2019: 35, § 151).
30. AHRC (2013: 58–59). On the background of his assassination, see Choudhry (2014).
31. Ahmed (2019-08-12).
32. PT (2015-09-21).
33. Ahmed (2019-10-14): <http://bit.ly/2MiyQ6G> [17.09.2019]: <http://bit.ly/2Sb0LJo> [17.10.2019].
34. Ahmed (2019-10-10): <http://bit.ly/2Sb0LJo> [17.10.2019].
35. Ahmed (2019-10-04): <http://bit.ly/2MiyQ6G> [17.10.2019].
36. GW (2019-10-23).
37. Bhatt (2020), Kermani (2020).
38. Ahmed (2019-11-18): <http://bit.ly/3cmv5YX> [17.10.2019].

39. In 2017, the reported occurrences include a case of an assistant commissioner in Gilgit who charged three local newspapers for publishing stories about corruption and mismanagement (26 January 2017). Some instances of journalists reported to be threatened with murder include: Essa Haleem of Gilgit, threatened by a deputy speaker of the Gilgit-Baltistan Legislative Assembly (6 September 2016); Shafiullah of Chilas, threatened by an administration officer (5 January 2017) and later seriously beaten; Majeed Ahmar of Daily Salam Gilgit-Baltistan, threatened by a police station officer with being killed in a staged police encounter (10 January 2017); Shabir Siham (*vide infra*), threatened by government officials (January 2017); Saqib Umar of Daily Naaqara was classified as 'as a person concerned in terrorism' under Schedule IV of ATA (22 February 2017). Based on personal communication and on an unpublished report by HRCP (2017) ('Curbing the freedom of expression in GB') (the name of the author withheld).
40. Binding on the president, prime minister, every minister, the speaker and deputy speakers of Legislative Assembly, every member of Legislative Assembly or Council, advisors, etc. according to AJKIC, *Schedules*; see Balcerowicz–Kuszewska (2022b: § 4).
41. Binding on the governor, chief minister, speaker and deputy speaker of Legislative Assembly—according to GBESGO (2009) and GBGR (2019), *Schedules*; see Balcerowicz–Kuszewska (2022b: § 6–7).
42. NALFO (1994), Schedule I, Forms A–E; GGBO (2018), Schedule I; GBGR (2019) (loyalty oaths imposed on the governor, chief minister, ministers, speaker, deputy speaker and members of the Assembly, the chief judge and judges of Gilgit Supreme Appellate Court, chief judge and judges of GB High Court, advisors, auditor-general, chief election commissioner).
43. AJKIC (1974), Schedule I (loyalty oaths imposed on the president, prime minister, ministers, the speaker, the deputy speaker and members of Legislative Assembly, advisors).
44. GGBO (2018: § 9(4)) = GBGR (2019: § 8(4)).
45. AJKPPO (1973: Art. 3).
46. AJKLAEO (1970: Chap. 3, 2(vii)). This is repeated in AJKLAO (1970: Sec. VII, Art. 5(b)). Cf. OHCHR (2018a: § 147).
47. AJKPPA, § 9.
48. These include such parties and alliances as JKLF or All Parties Nationalist Alliance (APNA), Kashmir International Front (KIF), Jammu Kashmir Peoples National Party (JKPNP), JKPNA and the Kashmir National Alliance, including the National Liberation Front (NSF), the National Awami League (NAL), the National Democratic Party (NDP), Jammu and Kashmir National Students Federation (JKNSF).
49. HRW (2006a: 41, 47), OHCHR (2018a: § 148–151), OHCHR (2019: § 152–153).
50. Established in 2005. The movement comprises nationalist political parties: Balawaristan National Front, Karakorum National Movement, Gilgit-Baltistan National Movement, Gilgit-Baltistan Thinkers Forum, Baloristan Labour Party, Gilgit-Baltistan United Movement, Bolor Research Forum and Gilgit-Baltistan National Conference. It advocates political autonomy and a non-violent resolution of the Kashmir dispute and represents GB at the Unrepresented Nations and Peoples Organization (UNPO).
51. Established in 1992 with the purpose of discussing the status of the Northern Areas (GB) within the federation of PaJK, it comprises 14 political parties.
52. See e.g. IRBC (2011). For a review of political parties in PaJK, see Sharma–Yaqoob-ul-Hassan–Behuria (2019).
53. On nationalist movements and their dynamics in GB, see Dad (2016: 7–14).

54. Dad (2016: 14).
55. This is another wing (beside BNF-H) of the BNF movement led by Abdul Hamid Khan (until February 2019 a political refugee in Belgium, currently imprisoned in Pakistan), who has become increasingly critical of Pakistan and its stand vis-à-vis GB and AJK, called for Pak-China corridor protests in August 2015 and opts for total separation of GB from Pakistan.
56. NCTA (2019), at serial no. 68, a notification of 26 February 2019 by the National Counter Terrorism Authority (NCTA). Cf. PT (2019-03-06).
57. NCTA, proscribed under 65 on 8 June 2017.
58. OMTC (2013), AHRC (2013: 64).
59. See Balcerowicz–Kuszewska (2022b: § 5).
60. HRCP (2018: 151–152).
61. HRW (2006a: 32).
62. GBESGO (2009: Art. 11) = GBGR (2019: Art. 18).
63. GBESGO (2009: 9(2)), GGBO (2018: § 17(3)) = GBGR (2019: § 16(3)).
64. Ahmed: <http://bit.ly/2EHY9e2> and <http://bit.ly/2MieH0d> [1.12.2019].
65. They were either completely fabricated or phrased as 'spreading hatred against Pakistan', 'refus[ing] to use Pakistani brand' and 'not accepting the laws and constitution of the State' of Pakistan, etc. For details see Tanveer Ahmed (*blog*).
66. Ahmed (2017).
67. OHCHR (2018a: §§ 147–154) and OHCHR (2019: §§ 151–162).
68. OHCHR (2019: §§ 29, 156).
69. OHCHR (2018a: § 149, 153).
70. For instance, 16 books on independent Kashmir, including two written by Mohammad Maqbool Bhat, the JKLF founder, were banned in March 2016; see *Dawn* (2016-03-08), cf. Sharma–Yaqoob-ul-Hassan–Behuria (2019: 28–29). See also: HRCP (2004: 10), *Scroll* (2016-03-18).
71. In addition to reports, the author is in possession of respective film documentations of such cases.
72. E.g. Choudhry (2004, 2011, 2014).
73. Some such examples from GB include the following: Ali Haider, leader of the political party Majlis-e-Wahdat Al-Muslimeen (MWM), who had 'criticized the role of state institutions and their failure to maintain law and order in GB' and 'for their failure to provide the electricity to the citizens' in a public speech on 13 February 2015, was charged with sedition. Sheikh Hassan Johari, the founder and chairman of the Gilgit-Baltistan Youth Alliance (GBYA), and Hafiz Bilal Zubairi, a Skardu-based social activist and member of the GB Youth Alliance, who had criticised the provincial government for its negligence, were similarly charged for 'provocative speeches' on 19 May 2017. For similar reasons, Shaikh Naayar Abbas Mustafavi, the former General Secretary of Majlis-e-Wahdat ul-Muslimeen Gilgit-Baltistan, was arrested by Gilgit police on 20 May 2017.
74. As of 15 February 2017, the new names included Saqib Umar, a journalist, Zafar Shadum Khail, an ex-candidate for the GB Legislative Assembly and worker of PPP, Tuseef, a worker of the PPP, Didar Ali, ex-minister of GB, Aslam Inqalabi, a social activist, Mr. Yasoob Ali, leader of the Awami Action Committee (a civil society alliance for the rights of GB), Iqrar Hussain, a student, etc.
75. Ali Khan (2017), HRCP (2018: 147–148).
76. See, e.g. the cases of journalists Daulat Jan Mathal, Shabbir Saham (OHCHR 2018a: § 153), environmental activist Baba Jan, Iftikhar Hussain Karbalai and ten other protesters, including Sher Khan, Irfan Ali, Amir Khan, Rashid Minhas, Amir Ali; see also: AHRC (2014: 93), OHCHR (2018a: § 157), OHCHR (2019: § 168), Ahmed (2019-08-12).

77. OHCHR (2018a: §§ 153, 157).
78. OHCHR (2019: § 169).
79. OHCHR (2018a: § 167).
80. HRW (2006a: 32–39), FH AJK (2019), OHCHR (2018a: § 154), OHCHR (2019: § 159).
81. Past issues of *The Weekly Baang* (WBK) till 2012 available at: <http://weekly-baang.blogspot.in> [21.10.2018].
82. Based on personal communication, see also CPJ (2017-09-12).
83. HRCP (2004: 11).
84. Cf. USDS (2014: 23) ≈ USDS (2018).
85. HRCP (2004: 11).
86. USDS (2014: 23) ≈ USDS (2018).
87. USDS (2018).
88. HRCP (2018: 129).
89. *Vide supra* and Balcerowicz–Kuszewska (2022b: §§ 3–7).
90. AJKPPA, § 33.
91. GGBO (2018: Art. 20) = GBGR (2019: 19).
92. AJKIC, Art. 4.22, through AJKITAA (2018).
93. UDHR, Art. 18; ICCPR, Art. 27.
94. UDHR, Art. 18; ICCPR, Art. 18.
95. CIRP (1973: Art. 41) and the oaths of the president and the prime minister which indicate the religion ('I … do solemnly swear that I am a Muslim', 'May Allah Almighty help and guide me (A'meen)').
96. AJKIC (1974: Art. 5(4)(a)).
97. The oath: 'I … do solemnly swear that I am a Muslim'.
98. With its contents 'do solemnly swear that I owe allegiance to Allah', the oath excludes non-Muslims.
99. See the respective oaths of GGBO (2018), GBGR (2019).
100. GGBO (2018): 'May Allah Almighty help and guide me (A'meen)'; GBESGO (2009) = GBGR (2019): 'I … do solemnly swear that I owe allegiance to Allah. … So help me Allah'.
101. Through the Second Amendment to the Constitution of Pakistan, 7 September 1974 (Ahmadi Laws 1984). This move forced for instance Mohammad Abdus Salam, an Aḥmadī himself, the first Pakistani to receive a Nobel Prize (1979) and the second Muslim Nobel Prize winner ever, to leave his country.
102. Sections 298-B and C inserted through the Anti-Islamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, XX of 1984 (Ahmadi Laws 1984). Cf. also HRCP (2013: 27–29).
103. GGBO (2018: Art. 66(c)): 'nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens', a clause which entirely absent from GBESGO (2009), GBGR (2019), AJKIC (1974), CIRP (1973).
104. AJKIC (1974: § 3-I(h)), copy-pasted from CIRP (1973: Art. 37(h)).
105. GBGR (2019: § 32) = AJKIC (1974: § 3-C); wording copy-pasted from CIRP (1973: Art. 31), through AJKITAA (2018).
106. UDHR, Art. 2; ICCPR, Art. 2, Art. 26. Pakistan made certain reservations concerning some articles of ICCPR (3, 6, 7, 12, 13, 18, 19, 25, 40), but not the articles concerning the equal treatment.
107. HRCP (2017: 86).
108. PAP (2008).
109. FH AJK (2018)/FH AJK (2019).
110. Two such cases reported in: AI (33/008/2001: 12–13).
111. See Stöber (2007).
112. Bansal (2013: 17–20). Cf. Shekhawat (2011).
113. Ahmed (2017).

114. CIRP (1973: Art. 260 (2)), through *Ahmadi Laws* 1974 and *Ahmadi Laws* 1984.
115. The list of 'non-Muslim' enumerates only 'Christian, Hindu, Sikh, Buddhist or Parsi … Ahmadis, or a Bahai' and is both far from comprehensive and unproductive.
116. OHCHR (2019: § 172).
117. ICJ (2017: 10–18, §§ 50–90).
118. PPC, § 499.
119. PPC, §§ 295 and 298 as well as the Zia ul-Haq era insertions of 295 A-C and 298 A-C (including the anti-Aḥmadīya laws): § 298A inserted through Pakistan Penal Code (Second Amendment) Ordinance, XLIV of 1980. §§ 298B and 298C inserted through the Anti-lslamic Activities of Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, XX of 1984.
120. Zahra-Malik (2014-11-26), FH-P (2016).
121. Zahra-Malik (2014-06-06).
122. CPJ (2017-11-04), CPJ (2018-05-10).
123. OHCHR (2018a: §§ 19, 160, 161), OHCHR (2019: §§ 35, 171).
124. OHCHR (2018a: 49—§§ (e),(f)), OHCHR (2019: 42, 43—§§ (e),(f)).
125. GBGR (2019: Art. 32).
126. On the process of the Islamisation of Pakistan and its repercussions, see Kapur (2017), Topich (2018).
127. On the Nūrbakshshīs in GB, see Rieck (1995).
128. Yusuf (2012), PIPS (2019).
129. The main causes of sectarian and religiously-inspired violence in GB before 2013 include the following: May 1988: as a result of an Eid al-Fitr celebration argument, thousands of Sunnīs (including new inhabitants moved from FATA & Kohistan, now in KPK, to GB villages surrounding the area of Gilgit city) formed a posse (*lashkar*) and attacked 13 suburban Shīʿa villages in Gilgit (between 150 and 200 killed; some accounts estimate the toll at 300). 2 February 1990: two Shīʿas killed in Konodas (Gilgit). 1991: four Shīʿa labourers killed and burnt at Dalnati village. 31 May 1992: clashes in Gilgit city (12 killed) after the murder of Ghayas-ud-Din, the president of Sipah Sahaba Pakistan. 24 August 1992: riots in Gilgit after the murder of a politician, Muhammed Latif Hassan (at least 6 killed). 1993: A bus carrying passengers to Gilgit came under fire in Kohistan District (3 killed). 19 August 1993: riots in Gilgit after the killing of Barkat Ali (a number of dead). 2004: textbook controversy results in violent clashes, Shīʿa leader Aga Zia-ud-Din arrested, educational institutions remained closed for 10 months. 8 January 2005: sectarian riots erupt after an attack on Syed Agfa Ziauddin Rizvi in Gilgit (13 killed). 13 January 2005: new riots after the death of Aga Zia-ud-Din (18 killed). 18 October 2005: school students clashed with the rangers in Gilgit (12 killed). 2005: in total at least 80 people were killed as a result of sectarian violence in Gilgit. April 2009: The Deputy Speaker of Northern Areas Legislative Assembly (NALA) and his two colleagues murdered. 25 August 2010: sectarian riots in Gilgit. 27 February 2012: Shīʿa passengers travelling on a bus from Rawalpindi to Gilgit-Baltistan ambushed by gunmen (18 killed, 8 wounded). 3 April 2012: gun attack on passenger buses in Buner Farm Chilas (at least 10 killed, many wounded). Earlier, a hand grenade attack on a protest rally of Tanzeem-e-Ahle-Sunnat wal Jamaat GB near Gari Bagh in Gilgit killed at least five people and wounded 50. 16 August 2012: at least 22 Shīʿa and one Sunnī bus passengers executed in Naran valley of Hazara division. 6 June 2013: Gunmen killed nine foreign tourists and a Pakistani guide in a base camp of Nanga Parbat. Casualties of sectarian violence alone in 2011 and 2012: 27 Shīʿas killed and 17 injured, 19 Sunnīs killed and 76 injured, 4 Ismāʿīlis killed and 5 injured (data based on local and

HRCP unpublished reports). Casualties of sectarian violence (reported in the media) in the period 1 January–29 June 2014: 70 killed, 112 wounded. Cf. also Shekhawat (2011).

130. Muhammad (2014: 90), cf. Holden (2019: 8). For the history of the religious violence in GB, see also: PILDAT (2011b), Priyanka Singh (2012), Hunzai (2013), Mishra (2018).
131. Muhammad (2014: 100). On the scale of the violence, comp. Sial (2014: 34): 'A total of 74 terrorist attacks were reported from Gilgit-Baltistan between 2007 and July 2014—71 from Diamer and Gilgit alone—out of which 55 were sectarian-related and only 16 were carried out by the TTP and associated militants and other groups'.
132. AHRC (2013: 48).
133. DarT (2012-12-13), Mir (2012), Dad (2018).
134. See O'Mahony (2012).
135. UDHR, Art. 5, CCPR (2017: Art. 7), CTOCIDTP *passim*.
136. CTOCIDTP; signed: 17 April 2008, ratified: 23 June 2010.
137. CTOCIDTP, Art. 1: 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.
138. See, e.g., CCPR (2017: Artt. 21–22), in which the UN Human Rights Committee expresses their concern of 'the very broad definition of terrorism laid down in the Anti-Terrorism Act; by the Act's supremacy over other laws, including the JJSO (2000), which enables the courts to try juveniles; by the power of the authorities to detain a person for up to one year; and by the admissibility of confessions made in police custody as evidence in court, provided for in section 21-H of the Act. It is also concerned by the extensive jurisdiction of antiterrorism courts and the huge backlog of cases, as well as the absence of procedural safeguards in court proceedings (arts. 2, 6, 7, 14 and 15)'.
139. CIRP (1973: Art. 14), AACPR §§ 14(3), 15.
140. Whether false or true, also in common criminal cases, see HRW (2006a: 60–61).
141. HRW (2006a: 51–61). See also AI (33/018/2001) and AI (33/014/2001).
142. HRW (2006a: 51–61), AHRC (2012: 24).
143. E.g., AHRC (2016: 11), HRCP (2014: 72).
144. OHCHR (2018a: § 148). Numerous cases are also documented, e.g., by HRW (2006a: 51–61), AHRC (2009: 30), AHRC (2010: 22–24, 28–30), AHRC (2012: 24), AHRC (2016: 11), FH AJK (2016), CCPR (2017: Art. 19).
145. OHCHR (2019: § 34).
146. HRW (2006a: 52–59), AHRC (2010: 22–24, 28–30, 36, 44–47), AHRC (2012: 18), COI (2012: 52).
147. AHRC (2010: 29).
148. COI (2012: 52).
149. AHRC (2010: 23–24).
150. E.g., PPC §§ 361–369.
151. CCPR (2017: Art. 19).
152. Most relevant are those found in 'Chapter V, Internment' of AACPR, especially in '§ 9. Power to Intern'.
153. CCPR (2017: Art. 19).
154. CCPR (2017: Art. 19).

155. CCPR (2017: Art. 19).
156. AFAD (2018: 6).
157. AHRC (2012: 4–5).
158. Shah (2019).
159. For instance, AHRC (2010: 46) documented 15 cases of forced disappearances in AJK in the last six months of 2009.
160. AHRC (2012: 10), see also AHRC (2010: 36, 44–46).
161. AHRC (2012: 10).
162. AHRC (2012: 10).
163. AHRC (2013: 9–10).
164. AHRC (2010: 55–56).
165. See, e.g., AHRC (2016: 11), FH AJK (2016).
166. HRCP (2004: 18).
167. AHRC (2014: 65).
168. HRCP (2004: 18), HRW (2006a: 45, 59), AHRC (2014: 65).
169. HRCP (2004: 17).
170. Mehwish Jamal (2018).
171. CRIN (2011: 2011).
172. HRCP (2019a: 14).
173. In 3,832 registered cases of child abuse in 2018, 55% of the victims were girls, and 45% were boys, see Sahil (2018: ii, 1).
174. The above accounts of abuse in GB and AJK are based on personal communication.
175. Sirajuddin (2019).
176. HRCP (2004: 18).
177. HRCP (2019a: 11).
178. HRCP (2004: 18).
179. Ali–Rehman (2001: 141–144).
180. GGBO (2018: § 67), GBGR (2019: § 71), AJKIC (1974: § 32).
181. HRCP (2004: 8).
182. See, e.g., HRCP (2004: 11).
183. HRCP (2004: 15).
184. AHRC (2006: 2–3). The situation may have improved within a decade, see AHRC (2015: 16–17): 'this selective administration of justice has caused massive overcrowding of prisons. The collective authorized capacity of these prisons is 42,670. However, 78,328 prisoners are housed in these prisons. Thus, the jails throughout Pakistan are housing 35,000 more prisoners than their designed capacity'.
185. HRCP (2004: 15–16).
186. HRCP (2004: 16).
187. IRBC (1997).
188. CCPR (2017: Art. 1,1).
189. Ali–Rehman (2001: 146–147).
190. Ali–Benjaminsen–Hammad–Dick (2005: 371).
191. Ali–Benjaminsen–Hammad–Dick (2005: 371), PF (2011: 74–78, 80, 82–85).
192. ICG (2018: ii). See also OHCHR (2019: § 32).
193. ICG (2018: 15), OHCHR (2019: § 34).
194. HRCP (2017: 20), ICG (2018: 15).
195. OHCHR (2018a: § 159).
196. HRCP (2017: 20), OHCHR (2018a: 159).
197. ICG (2018: 15–16), OHCHR (2019: §§ 34, 169).
198. ICG (2018: 15–16).
199. Sökefeld (2012: 185).

200. Two members of the Gilgit-Baltistan Legislative Assembly hailing from the region were particularly criticized, Wazir Baig and Mutabiat Shah of the PPP, see Sökefeld (2012: 193–194).
201. Sökefeld (2012: 193–196).
202. AHRC (2014: 93), HRCP (2017: 18).
203. They also include human rights activists Israruddin Israr and Muhammad Fraooq prominent lawyer Ahsan Ali, and political leaders Aziz Ahmed, Safdar Ali, Javed, Kalamuddin, and student leader Faizan Mir.
204. After years of trials, nine activists of the group were finally acquitted in 2019.
205. The complete list of the accused: (1) Taruf Abbas of Karakorum National Movement (KNM), (2) Mumtaz Nagri (KNM), (3) Faizan Mir, President Gilgit-Baltistan Youth Movement, (4) Kamran Wahid (KNM), (5) Malik Waseem, Chairman Kashmir Students Federation, (6) Tahir Ali Tahir of Balawaristan National Movement (BNF), (7) Hidyat Ullah Akhtar, a social activist, (8) Azhar Ahmed Kashmiri, nationalist, (9) Advocate Muhammad Shafi (KNM), (10) Burhan Ullah (BNF), (11) Sultan Madad Balor of Research Forum, (12) Engineer Shujat Ali (BNF), (13) Sayed Tahir Ali Shah, nationalist leader, (14) Faqeer Shah, President of Anjuman-e-Imamia, (15) Sher Nadir of Karakoram Students Organization (KSO), (16) Mir Afzal of JKPNP, (17) Engineer Aman Ullah, nationalist leader, (18) Dr. Ghulam Abass, a nationalist leader, and (19) Advocate Muhammad Javed. For details, see Israr (2015).
206. Acquired private land of 7,936 acres in GB and 162 acres in KPK (Kohistan), with the total land to be acquired: 37,419 acres; funds released as compensation: Rs. 31,063,000 million in GB and Rs. 325,000 million in KPK (Kohistan)—according to the data of the Pakistan Water and Power Development Authority, Land Acquisition, WAPDA (2019a).
207. BS (2018-11-22).
208. WAPDA (2019a).
209. Bansal (2013: 30).
210. Sabir (2018: 25), WAPDA (2019b). On the environmental impact, see also EJA-Diamer.
211. BS (2018-11-22), Ahmad (2019).
212. Ahmad (2019).
213. NI (2010-02-20).
214. Ahmad (2019).
215. Naqash (2018-09-25).
216. Mahmud (2018-12-23).
217. EJA-Kohala.
218. Mahmud (2018-12-23).
219. Ali (2019).
220. Mahmud (2018-12-23).
221. On the dam and its impact, see Shekhawat (2009) and Ballard (1991), the latter also on how the damage done by the construction of the Mangla Dam contributed to the Azad Kashmiri nationalist movement. Cf. also EJA-Mangla.
222. See, e.g., Akhtar (2012: 75).
223. Mahmud (2018-12-23).
224. OMTC (2002).
225. Shekhawat (2009: 354).
226. Based on personal interviews.
227. Cf. OHCHR (2019: 149).
228. Sushant Singh (2015).
229. Mehdi (2015).
230. See, e.g., Bouzas (2017: 207) who refers to Robinson (2004: 151–155), cited as '2005'.

231. Bouzas (2017: 207).
232. It extends to 'the State Subjects', i.e. the residents of GB and AJK, only once they settle in the constitutional territory of Pakistan through the Pakistan Citizenship (Second Amendment) Act (PCA 1973-2) of 1973, and through the insertion of Section 14B: '*Certain persons to be citizens of Pakistan*.—A person who, being a subject of the State of Jammu and Kashmir, has migrated to Pakistan with the intention of residing therein until such time as the relationship between Pakistan and that State is finally determined shall, without prejudice to his status as such subject, be a citizen of Pakistan'. However, through other provisions, (such as passport laws), the state subjects of PaJK residing in PaJK rather than in Pakistan, are treated as the citizens of Pakistan only once they travel abroad, and are issued both Pakistani National Identity Cards and passports.
233. Through Section III,A(viii): 'All affairs of the Gilgit and Ladakh areas under the control of Political Agent at Gilgit'.
234. Cf. Dani (1991: 410, 416).
235. Dani (1991: 40, n. 1).
236. Inayatullah (1971).
237. Dani (1991: 419).
238. It is not the case, as Raman (2004: 189) and many others write, that 'The region known as the "Northern Areas" was created in 1973 with the promulgation of Pakistan's third constitution'. The 1973 Constitution of Pakistan nowhere mentions the Northern Areas (under whatever name) and AJK, except for two sections, here irrelevant.
239. See also OHCHR (2019: 149).
240. See Balcerowicz–Kuszewska (2022b: § 12).
241. Kreutzmann (1991: 723–724).
242. Cf. Kreutzmann (1991: 734).
243. Kreutzmann (1991: 724).
244. In AJK, the malpractices of illegally obtaining a domicile certificate, with a collusion of the corrupt local administration, are much rearer partly due to officially recognised SSR and partly due to widespread civil society monitoring such cases; see Ahmed (2019-08-12).
245. Raman (2009: 79).
246. Rieck (1997: 215), Stöber (2007: 399, n. 63).
247. PILDAT (2011b: 12).
248. Raman (2009: 79).
249. Ahmed (2019-08-12).
250. Wazir–Goujon (2019: 5).
251. UDHR, Art. 22; CCPR (2017: Art. 27).
252. Kreutzmann (2005: 5–11). For a detailed analysis of the distribution of the major languages represented in PaJK and IaJK, see Shakil (2012).
253. Cf. Fussman (1991).
254. Blažek (2019: 67).
255. FBoS (2017c).
256. PEW (2009: 14).
257. PEW (2009: 10).
258. Siddiqa (2007: 216).
259. Cf. Bansal (2013: 31).
260. HRCP (2018: 254).
261. AHRC (2015: 6).
262. AHRC (2015: 6).
263. Personal communication and unpublished report.
264. Ahmed (2019-10-15): <http://bit.ly/2rY0G13> [17.10.2019].

265. Jacob (2017: 12, Table 1). Cf. also the data gathered by IPCM.
266. Sajid (2019).
267. Ali–Maqbool (2019).
268. Ahmed (2019-09-11): <http://bit.ly/2Sb0LJo> [17.10.2019].
269. Ahmed (2015-08-25): <http://bit.ly/2PKCM25> [17.10.2019].
270. Even though the Pakistani army is reported to keep civilian villages informed ahead of their forward positions all along the LoC.
271. Photos available with the author. Cf. also Ahmed (2013-02-21): <http://bit.ly/2PKCM25> [12.05.2017].
272. Nakamura (1999: 130).
273. *Kāśikā* 1.2.52: *pañcalāḥ jana-padaḥ*.
274. See Balcerowicz–Kuszewska (2022b: § 15.2).
275. See Balcerowicz–Kuszewska (2022a: §§ 8–12).
276. See Balcerowicz–Kuszewska (2022a: §§ 13–18).

11 Epilogue

Piotr Balcerowicz and Agnieszka Kuszewska

The unceasing Kashmir dispute multidimensionally affects the inhabitants of all parts of the erstwhile Princely State of Jammu and Kashmir, currently administered by India and Pakistan. The people on both sides of the Line of Control are incessantly entangled in the intractable conflict, which involves a substantial risk of abrupt escalation on local and interstate levels. At the beginning of the third decade of the 21st century, the calls for freedom, *āzādī*, true autonomy and justice heard in both parts of Kashmir have remarkably intensified, even if the dissenters have to bear significant risk and count with institutionalised, state-imposed persecution which may involve anything from the so-called enforced disappearance, or extrajudicial killing, to extra-legal arrest and incarceration.

India and Pakistan incessantly accuse each other of human rights abuses, while at the same time, both perpetrate large-scale violence vis-à-vis the residents of their respective administered parts of the disputed region, holding the population hostage to their own political, economic, military, strategic and other interests. At the same time, despite India's claims to the contrary, the legal status of these regions has not been decisively determined with a people-oriented approach that would safeguard their inherent rights and freedoms and according to the international law and earlier agreements.

An in-depth examination of the situation of human rights in both chunks of the divided Kashmir, presented in this monograph, leads to an inevitable conclusion that both India and Pakistan systemically and systematically violate the inalienable, basic rights and freedoms of its inhabitants, with legal, administrative and political structures providing sound ramifications for a range of such violations. Disregard for human rights, including civil liberties and political rights, in Kashmir is not simply due to negligence, illiteracy, ill will or personal savagery of the perpetrators. The violations are embedded in the structures of power and are part and parcel of the manner both India and Pakistan administer the territories. It is therefore imperative to analyse the nature of such violations in the wider political, legal and administrative context, including the power structures behind the curtains, and a detailed insight into the intensity and scale of these violations is prerequisite. As we can see, the severity level and magnitude of these violations

DOI: 10.4324/9781003196525-13

vary both in terms of geography and time and reach the unprecedented level in the Kashmir Valley, yet similar patterns of multidimensional abuses are regularly observable on the Pakistani side.

Despite the much more visible brutality and omnipresence of the Indian apparatus of state violence operating in Kashmir, as documented in Part 1, it is paradoxically much easier to collect information in IaJK as local NGOs and human rights activists, although subjected to enhanced intimidation and various forms of harassment, are still able to monitor the situation on-spot and provide more comprehensive analyses and reports. In contrast, in PaJK in particular, the access to the population and information that would allow collecting extensive and reliable data is largely restricted by the ruling establishment. Nevertheless, the omnipresent abuses of human rights are, as Part 2 outlines, part and parcel of everyday life in Azad Jammu and Kashmir and in Gilgit-Baltistan, in many ways, similar to those encountered in Indian-administered Kashmir.

From the very outset of the dispute and despite ceaseless antagonism and conflict, both adversaries share a number of commonalities with respect to the respective chunks of the former PSJ&K they hold under their control, which are treated either as *de facto* or *de jure suo* integral parts of India and Pakistan, and their importance lies in propagandistic, strategic and economic reasons. The affinity of interests vested in Kashmir by India and Pakistan notwithstanding, the interests translate into rather dissimilar directions and the policies take that eventually involve inconsistencies and paradoxes.

A tendency, which has escalated in the last three decades, and in particular in the BJP-dominated and Hindutva-suffused era, is to simultaneously treat all Muslims as an alien accretion that by default is not that of Indian origin, and to claim the territories they inhabit as an integral part of India. Accordingly, unlike other parts of India, Kashmir turns out to primarily be the land *per se*, with the population being a fully dispensable adjunct to the territory, an annoyance and a reminder of an imagined threat to the ideal of Hindu(tva) integrity and purity of the Bhārat Mātā (Mother India). With India's explicit focus on the territory, not on the people, the control of Kashmir is not directly linked to India's survival as a state, except for fears that Kashmir's separation from Mother India might trigger a domino effect, with some other parts of India willing to quit the Indian Union. Consequently, India's policies vis-à-vis Kashmir should be interpreted as mainly of offensive character.

In contrast, Pakistan officially maintains that Kashmir is linked to Pakistan through national-religious bonds, as an extension of both the Muslim *Ummaḥ* and the Muslim nation, for the sake of which Pakistan was created. This conviction, or rather pretext to pursue a range of practical policies, is officially clad in open declarations that the Kashmiris are entitled to independently determine their future, but such statements are fully unfounded and easily contradicted by legal, administrative, military,

economic and other measures Pakistan takes with respect to Kashmir territories. As it appears, it is—again—the territories of Kashmir that primarily attracts the attention of Pakistan, considered vital for its existential survival, military protection, strategic goals and economic security, largely serving as a communication link to and a prerequisite for the cooperation with China, lately within the China-Pakistan Economic Corridor framework. A range of potential future risks involved in this kind of dependence relationship with China notwithstanding, Pakistan uses Kashmir as a protective cushion for its existence at the side of powerful India and a jugular vein-like connection to China, the All-Weather Friend and the Big Brother expected to play a role of its protector. Unlike India's, Pakistan's interests vested in Kashmir territories should therefore be understood as primarily of defensive and existential character.

In both cases, regrettably, the focus of the rival parties is on the territories, not on the peoples of Kashmir, who are for all practical purposes merely superfluous appendages. This tends to justify all kinds of measures adopted to preserve either territorial integrity or territorial claims to Kashmir, even at the cost of the local population. Consequently, the policies implemented officially (often sanctified by laws incompatible with international standards) or unofficially (in brazen disregard for constitutional arrangements adopted by India and Pakistan themselves) routinely tolerate and even encourage a wide range of human rights violations.

The paradoxical synergy between, and parallelism of such steps taken by, India and Pakistan in unison is often striking. For instance, the discussions on a possible provincial status of Gilgit-Baltistan within the constitutional framework of Pakistan were echoed by the abrogation of Kashmir's autonomy by India in August 2019, which in turn led to decisive legal steps to incorporate Gilgit-Baltistan as a Pakistani province at the turn of 2020/2021. Symbolically on the very same day, 8 April 2021, both countries undertook steps in order to protect the police and armed forces in Kashmir from the spying eyes of reporters and the media, to prevent documentation of possible crimes and violations of human rights perpetrated by the forces and possible criticism ensuing from such coverage. In the name of 'national security,' the Jammu and Kashmir police banned reporters from 'to interfer[ing] in the professional and bonafide duty of police and security forces at encounter sites and during law- and-order situations,' and ordered 'media persons not to come closer to the encounter site and law-and-order situation and do not carry any live coverage of any encounter and law-and-order situation.'[1] Across the border and in the very same spirit, the National Assembly Standing Committee on Interior approved the Criminal Law Amendment Bill 2020 that introduced amendments to the Pakistan Penal Code and Code of Criminal Procedure 1898, in particular the 'punishment for intentional ridiculing of the Armed Forces etc. Whosoever intentionally ridicules, brings into disrepute or defames the Armed Forces of Pakistan or a member thereof, he shall be guilty of an offence punishable with imprisonment

for a term which may extend to two years, or fine …, or with both.'[2] Both measures are meant to bring the same effect: to prevent the coverage of situations that may be potentially deemed crimes or violations of human rights and silence any criticism of the perpetrators. Also in terms of the structure of violations adopted, both India and Pakistan follow the same model of, what we have deliberately termed, 'the four-pack' consisting of enforced disappearances, illegal detentions, torture and extra-judicial killings, besides the scheme of fake encounters, a range of other forms of intimidation and a consistent policy of denial of a range of human rights, such as the right to freedom of expression and related rights, political rights, the right to freedom of religion and belief, cultural rights or the right to a dignified life.

Unsurprisingly, India and Pakistan alike face tremendous challenges with regard to their domestic democratic and human rights standards. Due to their intensity, ubiquitous presence and embedment within the state structure, the patterns of human rights violations and systemic deprivation of the inhabitants of divided Kashmir deserve particular attention as well as condemnation by the international community. Anyone investigating the plight of Kashmir and the Kashmiri population cannot fail to notice its striking resemblance to, for instance, that of the Israeli-occupied Palestinian territories or the PRC-annexed Hong Kong, after its autonomy guaranteed under the principle of 'one country, two systems' was brutally dismantled. Whereas the abuses of civil and human rights in these regions have regularly sparked massive international outcry, no one seems particularly concerned with the situation of the people of Kashmir on both sides of the Line of Control, or even with the abrogation of Jammu and Kashmir autonomy.

As the parties bound by the global human rights regime who declare to act in conformity with the international legal tools and mechanisms, the governments of both India and Pakistan are legally and morally obliged to fulfil their obligations to respect and safeguard human rights, civil liberties and democratic standards inalienably due to all their citizens, including the peoples of Kashmir. In every single suspicion of human rights violations, not to mention documented crimes, they are bound by international obligations and their constitutional ramifications to enable unrestricted access to justice and independent courts, transparent investigation without fear of repressions, retribution or intimidation, and the perpetrators of human rights abuses should with no exception be held accountable in accordance with internationally recognised democratic standards.

Notes

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2. Abbasi (2021).

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